

Exhibit D

Complaint

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>MOM CA Investco LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 25-10321 (BLS)</p> <p>(Jointly Administered)</p>
<p>Mohammad Honarkar and 4G Wireless, Inc.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MOM CA Investco LLC, MOM AS Investco LLC, MOM BS Investco LLC, Retreat at Laguna Villas, LLC, Sunset Cove Villas, LLC, Duplex at Sleepy Hollow, LLC, Cliff Drive Properties DE, LLC, 694 NCH Apartments, LLC, Heisler Laguna, LLC, Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 AT Laguna, LLC, Laguna Art District Complex, LLC, Tesoro Redlands DE, LLC, Aryabhata Group LLC, Hotel Laguna, LLC, 4110 West 3rd Street DE, LLC, 314 S. Harvard DE, LLC, Laguna HI, LLC, Laguna HW, LLC, The Masters Building, LLC, and 837 Park Avenue, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Adv. Pro. No. 25-_____</p>

¹The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: MOM CA Investco LLC [6263], MOM AS Investco LLC [6049], MOM BS Investco LLC [6180], Retreat at Laguna Villas, LLC [2046], Sunset Cove Villas, LLC [9178], Duplex at Sleepy Hollow, LLC [9237], Cliff Drive Properties DE, LLC [0893], 694 NCH Apartments, LLC [0318], Heisler Laguna, LLC [4709], Laguna Festival Center, LLC [4073], 891 Laguna Canyon Road, LLC [0647], 777 AT Laguna, LLC [8715], Laguna Art District Complex, LLC [8316], Tesoro Redlands DE, LLC [2764], Aryabhata Group LLC [7332], Hotel Laguna, LLC [9580], 4110 West 3rd Street DE, LLC [8641], 314 S. Harvard DE, LLC [2057], Laguna HI, LLC [6408], Laguna HW, LLC [9470], The Masters Building, LLC [6134], 837 Park Avenue, LLC [3229], and Terra Laguna Beach, Inc. [2344] (interim). The Debtors' headquarters are located at 520 Newport Center Drive, Suite 480, Newport Beach, CA 92660.

COMPLAINT FOR DECLARATORY JUDGMENT, IMPOSITION OF CONSTRUCTIVE TRUST, AND TURNOVER OF PROPERTY

Mohammad Honarkar (“**Honarkar**”) and 4G Wireless, Inc. (“**4G**” and together with Honarkar, the “**Honarkar Parties**” or “**Plaintiffs**”), by and through their undersigned counsel, hereby bring this adversary complaint (this “**Complaint**”) for declaratory judgment, imposition of a constructive trust, and turnover of property against: (i) Defendants MOM CA Investco LLC, MOM AS Investco LLC, and MOM BS Investco LLC (collectively, the “**MOM JV Entities**”), and (ii) Defendants Retreat at Laguna Villas, LLC, Sunset Cove Villas, LLC, Duplex at Sleepy Hollow, LLC, Cliff Drive Properties DE, LLC, 694 NCH Apartments, LLC, Heisler Laguna, LLC, Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 AT Laguna, LLC, Laguna Art District Complex, LLC, Tesoro Redlands DE, LLC, Aryabhata Group LLC, Hotel Laguna, LLC, 4110 West 3rd Street DE, LLC, 314 S. Harvard DE, LLC, Laguna HI, LLC, Laguna HW, LLC, The Masters Building, LLC, and 837 Park Avenue, LLC. (collectively, the “**SPEs**” and together with the MOM JV Entities, “**Defendants**”),² and allege as follows:

NATURE OF THE ACTION

1. By this action, Plaintiffs seek entry of a judgment declaring that (i) Defendants and their estates have no equitable or beneficial ownership interest in certain membership interests and real property currently held by Defendants, (ii) Defendants hold such interests and real property in trust for the benefit of Plaintiffs, and (iv) Defendants are obligated to immediately transfer any remaining legal title they may have to Plaintiffs.

2. On June 8, 2021, the MOM JV Entities were created through a joint venture (the “**Joint Venture**”) between and among Plaintiffs, on the one hand, and limited liability companies

² Collectively, the MOM JV Entities and the SPEs comprise the debtors and debtors-in-possession in the Chapter 11 Cases (the “**Debtors**”).

created by Continuum Analytics, Inc. (“**Continuum**”), Mahender Makhijani (“**Makhijani**”), on the other hand.³ As part of their contribution to the Joint Venture, Plaintiffs transferred to the newly-formed MOM JV Entities their membership interests in various limited liability companies, including nearly all of SPEs, each of which holds title to valuable commercial real estate.

3. The Joint Venture was doomed from the start and in early 2023, Plaintiffs discovered that the Continuum Parties had committed numerous acts of fraud and misconduct against Plaintiffs, both before and after the Joint Venture was formed. Accordingly, Plaintiffs commenced an arbitration with JAMS on April 25, 2023 (the “**Arbitration**”),⁴ asserting, among other things, claims for fraudulent inducement, breach of contract, and declaratory relief. Plaintiffs sought, *inter alia*, to rescind the transactions creating the Joint Venture, thus returning the membership interests in the SPE’s to Plaintiffs.

4. The Honorable David A. Thompson, a former Associate Justice with the California Court of Appeals, was designated as the arbitrator (the “**Arbitrator**”). The Arbitration included extensive written and oral discovery, pre- and post-hearing briefing, and culminated in a three-week-long evidentiary hearing held from June 24, 2024, through July 12, 2024, after which all parties confirmed there was no further evidence for consideration. The record in the Arbitration is now closed.

³As used herein, the term “**Continuum Parties**” shall refer, collectively, to Makhijani, Deba Shyam (“**Shyam**”), Jason Miller, Andrew Stupin, Bhajneet Singh Malik, Continuum, MOM CA Investor Group LLC (“**MOM CA Member**”), MOM AS Investor Group LLC (“**MOM AS Member**”), MOM BS Investor Group LLC (“**MOM BS Member**,” and together with MOM CA Member and MOM AS Member, the “**MOM Members**”), MOM CA Manager LLC (“**MOM CA Manager**”), MOM AS Manager LLC (“**MOM AS Manager**”), and MOM BS Manager LLC (“**MOM BS Manager**,” and together with MOM CA Manager and MOM AS Manager, the “**MOM Managers**”).

⁴As used herein, the term “**Arbitration**” shall refer to the JAMS arbitration proceeding captioned as *Honarkar v. Makhijani*, No. 5220003126, as consolidated with the arbitration proceeding captioned as *MOM AS Investco LLC v. Honarkar*, No. 5200001122.

5. The Arbitrator issued that certain *Partial Interim Award* entered in favor of Plaintiffs on February 21, 2025 in JAMS Arbitration No. 5220003126 (the “**Partial Interim Award**”)⁵, in which the Arbitrator found, among other things, that Makhijani, Continuum, and the MOM Members fraudulently induced Plaintiffs into signing the agreements for the Joint Venture and that the MOM Members and MOM Managers breached their obligations under the MOM JV Entities’ operating agreements. The Partial Interim Award entitles Plaintiffs to elect either compensatory damages or rescission of the operating agreements and other Joint Venture agreements in addition to restitution and consequential damages, amongst other remedies. A true and correct copy of the Partial Interim Award is attached hereto as Exhibit 1.

6. Just one week later, on February 28, 2025, the MOM JV Entities filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in this Court. On March 10, 2025, the SPEs filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court, as well.

7. On May 23, 2025, the Arbitrator issued the Partial Final Award (the “**Partial Final Award**”). The Partial Final Award incorporates the Partial Interim Award. As referenced in the Partial Final Award, the Arbitrator’s Ruling on Motion for Attorney Fees and Costs (the “**Attorney Fee Ruling**”) was filed contemporaneously with the Partial Final Award and entitles the Honarkar Parties’ to recover their attorneys’ fees and costs against the Respondents in the amount of \$8,303,510.25 in attorney fees plus \$893,916.06 in costs, for a total of \$9,197,426.31. True and correct copies of the Partial Final Award and Attorney Fee Ruling are attached hereto as Exhibit 2 and Exhibit 3, respectively.

⁵ Capitalized terms not defined in this Complaint have the meaning given to such terms in the Partial Interim Award, as defined herein.

8. Under California law, Defendants do not currently have an equitable or beneficial ownership interest in the SPEs' membership interests or the real estate owned by the SPEs. Defendants hold such assets in trust for Plaintiffs' benefit.

9. Accordingly, Defendants are entitled to the immediate turnover of the Investco Membership Interests and the Real Property (including any Sale Proceeds (as defined herein)), and Defendants must transfer any remaining legal title they may have to Plaintiffs.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory predicates for the relief sought in this complaint are 11 U.S.C. §§ 105(a) and 541(d) of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

13. Pursuant to Rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Plaintiffs consent to the entry of a final order or judgment by this Court in connection with this Complaint to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PARTIES

14. Plaintiff Mohammad Honarkar is an individual with his principal place of residence in Orange County, California.

15. Plaintiff 4G Wireless, Inc. is a California corporation with a principal place of business located at 303 Broadway Street 104-155, Laguna Beach, CA, 92651. Honarkar wholly owns and controls 4G.

16. Defendants MOM CA Investco LLC, MOM AS Investco LLC, MOM BS Investco LLC, Retreat at Laguna Villas, LLC, Sunset Cove Villas, LLC, Duplex at Sleepy Hollow, LLC, Cliff Drive Properties DE, LLC, 694 NCH Apartments, LLC, Heisler Laguna, LLC, Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 AT Laguna, LLC, Laguna Art District Complex, LLC, Tesoro Redlands DE, LLC, Aryabhata Group LLC, Hotel Laguna, LLC, 4110 West 3rd Street DE, LLC, 314 S. Harvard DE, LLC, Laguna HI, LLC, Laguna HW, LLC, The Masters Building, LLC, and 837 Park Avenue, LLC are Delaware limited liability companies with their principal place of business located at 520 Newport Center Drive, Suite 480, Newport Beach, CA 92660.

FACTS COMMON TO ALL COUNTS

A. Honarkar builds his business and real estate portfolio.

17. Honarkar moved to the United States from Iran in the mid 1980's and started a small cell phone business. That small business ultimately blossomed into 4G—a tremendously successful enterprise with 160 stores across five states. Although Honarkar sold the business assets of 4G to Verizon Wireless in January 2016, he retained his 100% ownership of 4G.

18. Honarkar used the proceeds from the Verizon sale to invest in luxury commercial real estate across Laguna Beach, Palm Desert, and surrounding areas. These properties were purchased in both his individual name, and also through 4G, which held them through various special purpose limited liability companies.

B. The Honarkar Parties are fraudulently induced to join the Joint Venture.

a. Honarkar's financial distress.

19. While Honarkar enjoyed early success with his real estate pursuits, the 2020 COVID-19 pandemic severely affected the Honarkar Parties' operations and, ultimately, Honarkar's cash flow from the properties owned by 4G. At the same time, Honarkar was also

involved in a contentious divorce, which resulted in him entering into a stipulated judgment whereby he was required to pay his former wife \$17.5 million by June 12, 2021.

20. Further compounding these pressing financial issues, Honarkar also had a \$195 million loan from LoanCore Capital (“**LoanCore**”) secured by the majority of Honarkar’s real estate assets (the “**LoanCore Loan**”) coming due, which Honarkar had also personally guaranteed. Unfortunately, Honarkar was not able to make a required balloon payment under the loan, which went into default. *See id.* at 5-6.

21. In January 2021, at the request of Honarkar’s wife, Douglas Wilson was appointed received over the properties that secured the LoanCore Loan. Shortly thereafter, DIG PFSS LBCP Holding Company LLC purchased the LoanCore Loan and took swift action to foreclose on the properties, with foreclosures scheduled to commence on June 15, 2021.

b. Honarkar’s search for funding leads him to Makhijani and Continuum.

22. With foreclosures looming and a \$17.5 million payment due in June 2021 to his former wife, Honarkar began searching for potential financing and investment opportunities that could provide him with urgently-needed cash at a time of both global and personal financial distress.

23. One of the funding sources he considered was Nano Banc (“**Nano**”), one of Honarkar’s previous lenders. Through this lending relationship, Honarkar was familiar with Nano’s then-Chief Credit Officer, Anthony Gressak (“**Gressak**”). Gressak introduced Honarkar to Makhijani and Continuum, each of whom have deep ties to Nano.

24. On May 19, 2021, Nano provided Honarkar with a letter of intent for a \$150 million loan to pay off the LoanCore Loan. But while Nano, though Gressak, was leading Honarkar to believe that funding was imminent, the reality at the bank was much different. Indeed, Daniel F. Patrick, Nano’s Person Most Knowledgeable witness in the Arbitration, tested that \$150 million

was “well beyond the bank’s legal lending limit for a single loan” and that Nano “never would have approved Mr. Honarkar for a \$150 million loan[.]”

25. At the same time he was negotiating a potential loan from Nano, Honarkar was also discussing the potential Joint Venture terms with Makhijani and Continuum. Notably, on May 20, 2021, just **one day** after it provided Honarkar with the letter of intent for the (illusory) \$150 million loan, Nano provided Shyam with a letter of intent for a \$20 million loan (the “**Nano Loan**”) to be made to the MOM JV Entities and secured by (i) an assignment of membership interests in 689 South Coast Hwy LLC, Laguna HI LLC, and the Masters Building LLC and (ii) deeds of trust encumbering properties held by these limited liability companies. **At the time the letter of intent for the Nano Loan was conveyed to Shyam, the properties were wholly owned by the Honarkar Parties, the MOM JV Entities did not exist, and there was no binding agreement in place between the Honarkar Parties and the Continuum Parties to even form the MOM JV Entities.**

26. On May 24, 2021, and with time running down until the foreclosures began and his former wife’s settlement payment came due, the Honarkar Parties and Continuum entered into a term sheet to form the Joint Venture. The term sheet contemplated that the Honarkar Parties would contribute their interests in the subsidiary limited liability companies that held some, but not all, of their real estate portfolio, and Continuum would provide an initial capital contribution of \$35 million of “cash equity,” half of which was always intended to be used to pay off Honarkar’s wife. Continuum was also obligated to secure refinancing to pay off the balance of the LoanCore Loan, which was then estimated to be approximately \$140 million. Because the term sheet was binding only on Honarkar, he was locked into the Joint Venture, but Continuum was free to pursue other options.

c. Continuum exerts maximum pressure to obtain Mr. Honarkar's signature on the rushed joint venture agreements.

27. With time continuing to dwindle, Honarkar's counsel offered to provide initial operating agreements for the MOM JV Entities. Continuum refused and instead directed its attorneys to take control of the documents. Incredibly, although Makhijani and Continuum were aware of Honarkar's immense time pressure, they elected not to share the draft operating agreements with Honarkar when they were ready. Instead, on May 28, 2021, they circulated the operating agreements to one of the banks they were considering using to refinance the LoanCore Loan. Honarkar and his counsel did not receive them until almost a week later on June 2, 2021—less than two weeks before the foreclosures were to commence and ten days before the \$17.5 million payment to Honarkar's wife was due.

28. The Arbitrator observed that “[e]veryone agrees the JV document negotiation and drafting process was chaotic and frantic,” and that Continuum, through its employee Michael Klutchin, pressured Honarkar into providing signature pages before the documents were even finalized. Throughout the negotiation process, Honarkar repeatedly had to confirm whether his comments to the documents had been accepted and incorporated—or whether he had even been solicited for comment at all.

29. Predictably, this frenzied negotiation process caused additional delay that Honarkar could not afford given his impending financial cliff. Ultimately, Continuum was not able to secure sufficient financing to refinance the LoanCore Loan and, at the suggestion of Makhijani, Continuum reduced its initial contribution to \$30 million to “close the gap”—despite Continuum's prior commitment of a \$35 million initial contribution under the term sheet. This change resulted in Honarkar being unable to satisfy his settlement obligation to his former wife, which caused him to forfeit his former residence.

30. The lead up to closing on the Joint Venture agreements was just as chaotic as the rest of negotiations, with last-minute blanks in documents and missing exhibits. Most critically, Exhibit C to the operating agreements—which was to contain the list of limited liabilities that Honarkar would contribute to the Joint Venture—was not even circulated to Honarkar and his counsel until 11:00 p.m. on the night before the Joint Venture was to be formed and the LoanCore refinancing was to occur. And even at that later hour, the list was grossly inaccurate. Instead of just listing the entities that Honarkar would contribute to the Joint Venture, Makhijani populated Exhibit C with a comprehensive list of all of the Honarkar Parties’ entities. Strictly read, this would suggest (incorrectly) that each and every one of Honarkar’s business interests would be transferred to the Joint Venture.

31. Nevertheless, the MOM JV Entities were formed on June 8, 2021. *See id.* at 9.

C. Defendants’ Post-Joint Venture Corporate Structure.

32. Following the Joint Venture, Plaintiffs held (and continue to hold) 50% of the membership interests in each of the MOM JV Entities. *See Ex. 4* (Spindler Report) at 2, 19. The remaining 50% membership interest in MOM CA Investco LLC is held by MOM CA Member, which is 100% owned by Shyam. The remaining 50% membership interest in MOM AS Investco LLC is held by MOM AS Member, which is 100% owned by Andrew Stupin. The remaining 50% membership interest in MOM BS Investco LLC is held by MOM BS Member, which is 100% owned by Bahjneet Singh Malik.

33. The MOM JV Entities hold all of the membership interests in the SPEs, which, in turn, hold title to various real properties (collectively, the “**Real Property**”) located in California. *See Ex. 1* (Partial Interim Award) at 3-11.

34. Upon information and belief, MOM AS Investco LLC holds the membership interests in the following SPEs: (1) Retreat at Laguna Villas, LLC; (2) Sunset Cove Villas LLC;

(3) Duplex at Sleepy Hollow, LLC; (4) Cliff Drive Properties DE, LLC; (5) 694 NCH Apartments LLC; and (6) Heisler Laguna LLC (collectively, the “**MOM AS Membership Interests**”). *See* Ex. 4 (Spindler Report) at 9.

35. Upon information and belief, MOM BS Investco LLC holds the membership interests in the following SPEs: (1) 891 Laguna Canyon Road, LLC; (2) 777 At Laguna, LLC; (3) Laguna Art District Complex, LLC; and (4) Laguna Festival Center, LLC (collectively, the “**MOM BS Membership Interests**”). *See id.*

36. Upon information and belief, MOM CA Investco LLC holds the membership interests in the following SPEs: (1) The Masters Building, LLC; (2) 689 S. Coast Hwy, LLC; (3) 837 Park Ave, LLC; (4) Laguna HI, LLC; (5) Laguna HW, LLC; (6) 314 S. Harvard DE, LLC; (7) 4110 W. 3rd St. DE, LLC; (8) Tesoro Redlands, LLC; (9) Cliff Village, LLC; (10) Hotel Laguna, LLC; (11) Tustin Retail Properties, LLC; (12) Aryabhata Group, LLC (collectively, the “**MOM CA Membership Interests**”, and together with the MOM AS Membership Interests and the MOM BS Membership Interests, the “**Investco Membership Interests**”). *See id.*

37. The chart below lists the Real Property and their corresponding SPEs, to the best of Plaintiffs’ knowledge. Because the Continuum Parties have denied Plaintiffs access to the MOM JV Entities’ books and records for years, Plaintiffs do not currently have a full, up-to-date list of all the MOM JV Entities’ subsidiaries.

MOM Debtor	SPE	Real Property Address(es)
MOM AS Investco LLC	Retreat at Laguna Villas, LLC	749 Gaviota (729 Ocean Front)
	Sunset Cove Villas, LLC	683 Sleepy Hollow Ln, Laguna Beach
	Duplex at Sleepy Hollow, LLC	689 Sleepy Hollow Ln, Laguna Beach
	Cliff Drive Properties DE, LLC	150-154 Cliff Dr, Laguna Beach

	Aryabhata Group, LLC	4251,4225,4253 Martingale Way; 1701 Corinthian Way; 4200,4220,4250 Scott Drive; 1660 Dove Street, Newport Beach
	694 NCH Apartments, LLC	694 N Coast Hwy, Laguna Beach
	Heisler Laguna, LLC	305-397 North Coast Highway, Laguna Beach
MOM BS Investco LLC	Laguna Festival Center, LLC	805-859 Laguna Canyon Rd, Laguna Beach
	891 Laguna Canyon Road, LLC	891 Laguna Canyon Rd, Laguna Beach
	777 at Laguna, LLC	777 Laguna Canyon Rd, Laguna Beach
	Laguna Art District Complex, LLC	775-793 Laguna Canyon Rd, Laguna Beach
MOM CA Investco LLC	The Masters Building, LLC	2711 Pacific Coast Hwy (2713 w Coast Hwy), Corona Del Mar
	Laguna HI, LLC	696 S Coast Hwy, Laguna Beach
	Laguna HW, LLC	688-690 S Coast Hwy, Laguna Beach
	314 S. Harvard DE, LLC	314 Harvard Blvd, Los Angeles
	4110 West 3rd Street DE, LLC	4110 West 3rd Street, Los Angeles
	837 Park Ave, LLC	837 Park Ave, Laguna Beach
	Tesoro Redlands DE, LLC	106 W Pennsylvania Ave, Redlands
	Hotel Laguna, LLC	421 S Coast Hwy, Laguna Beach

D. Honarkar discovers the fraudulent and invalid Nano Loan and the Continuum Parties retaliate.

38. Not surprisingly, the relationship between the Honarkar Parties and the Continuum Parties remained strained, and by early 2023, Honarkar was evaluating his options to exit the Joint Venture. While sourcing alternative financing, Honarkar discovered for the first time a deed of trust dated as of June 7, 2021 and securing the Nano Loan and encumbering one of the MOM JV Entities' properties. With that knowledge, he ran title searches on the MOM JV Entities' other

properties and discovered, again for the first time, the assignments of the MOM JV Entities' membership interests in 689 South Coast Hwy LLC, Laguna HI LLC, and The Masters Building LLC, as well as other previously undisclosed deeds of trusts, loans, and other transactions encumbering and involving certain of the other SPEs and properties. Honarkar's searching also uncovered the fact that the \$30 million initial contribution from the Continuum Parties (which had already been reduced from the agreed-upon \$35 million in the term sheet) had been funded in large part by the Nano Loan taken out by the MOM JV Entities themselves—before they were even formed and before Honarkar contributed any properties thereto.

39. Promptly upon discovering the Nano Loan and other issues, Honarkar sent a letter to Makhijani and Continuum raising his concerns. This letter went unanswered.

40. After his inquiry was ignored, Honarkar, through his counsel, sent a formal books and records demand to the MOM JV Entities on March 22, 2023. On April 3, 2023, the Continuum Parties indicated that they would provide documentation relating to the Nano Loan—but only if Honarkar withdrew his inspection demands. Honarkar declined, and instead filed a petition in Los Angeles Superior Court to access those books and records.⁶

41. Honarkar's books and records demand marked a turning point in his relationship with the Continuum Parties. On March 29, 2023, the Continuum Parties utilized their power as Managing Managers under the MOM JV Entities' operating agreements to purport to terminate Honarkar as Administrative Manager of the Joint Venture. But they did not stop there.

42. Two days later, a group of armed individuals working at the behest of the Continuum Parties entered and took control of numerous properties owned by the MOM JV

⁶ That request was granted over the Continuum Parties' objection on November 9, 2023.

Entities, including the Hotel Laguna, a Holiday Inn Hotel in Laguna Beach, and several other vacation rentals.

43. Then they confronted Honarkar again at the Hotel Laguna in May 2023, which resulted in the assault arrest of an agent of the Continuum Parties. But the Continuum Parties were still not done with their scorched-Earth crusade against Honarkar. During the night of June 30, 2023 and morning of July 1, 2023, the Continuum Parties dispatched their armed agents—again—to take physical control of another restaurant operated by Honarkar.

44. Later in July 2023, during a time at which Honarkar and certain of the Continuum Parties were at a scheduled court hearing, the Continuum Parties arranged for more than one dozen men in black to break through 4G’s corporate headquarters’ glass doors with a hammer and remove physical documents marked “LEGAL,” computers, and other property from the building.

E. The Arbitration and the Partial Awards

45. On April 25, 2023, Plaintiffs filed their original Demand and Statement of Claim commencing the Arbitration with JAMS, seeking the rescission of the MOM JV Entities’ operating agreements or, alternatively, the appointment of a receiver over the MOM JV Entities, compensatory and punitive damages, declaratory judgment, and an injunction reinstating Honarkar as the administrative manager. *See id.* at 14.

46. In the Arbitration, Plaintiffs asserted claims against Makhijani, Continuum, the MOM Members, and the MOM Managers for fraudulent inducement, breach of contract, and direct forcible entry and forcible detainer, as well as claims against Nano for conspiracy to commit and aiding and abetting fraudulent inducement. *See id.* at 3. Plaintiffs sought, *inter alia*, the rescission of the agreements creating the MOM JV entities, an accounting of the MOM JV Entities’ books and records by an independent third party, and declaratory relief as to the parties’ respective rights, duties, powers, and obligations under the MOM JV Entities’ operating agreements. *See id.* at 41.

47. The Continuum Parties—including the Debtors themselves—commenced their own arbitration against Mr. Honarkar alleging claims for among other things, trespass, conversion, and intentional interference with contractual relations. This arbitration was consolidated with the Arbitration, and the Continuum Parties' claims were addressed (and denied) in the Arbitration as counterclaims against Honarkar. *See id.* at 44.

48. The Arbitration culminated in a three-week-long evidentiary hearing held from June 24, 2024, through July 12, 2024. *See id.* at 44. The Arbitrator found that, throughout the course of the Arbitration, the Continuum Parties and their witnesses repeatedly presented false evidence and testimony. *See id.* at 17-20.

49. On February 21, 2025, the Arbitrator issued the Partial Interim Award. *See id.* at 3.

50. The Arbitrator found that Plaintiffs proved that Makhijani, Continuum, and the MOM Members had fraudulently induced Plaintiffs into signing the agreements for the Joint Venture, and that the MOM Members and the MOM Managers breached their obligations under the MOM JV Entities' operating agreements. *See id.* at 16-26, 27-30, 47.

51. The Arbitrator further found that the Continuum Parties proved none of their claims against Mr. Honarkar. *See id.* at 44.

52. Accordingly, the Arbitrator determined that Plaintiffs are entitled to elect the alternative remedies of either compensatory damages or rescission of the Joint Venture agreements in addition to restitution and consequential damages. The Arbitrator further determined that Plaintiffs were entitled to declaratory relief and the accounting⁷ that they had requested. *See id.* at 44-46.

⁷ The Debtors have indicated that they are negotiating a protocol for the accounting to be conducted, but to date the accounting has not yet commenced and the protocol has not been discussed in several weeks.

53. One week after the Partial Interim Award, Defendants filed for Chapter 11 bankruptcy on behalf of Terra Laguna Beach, Inc. (“**Terra**”)—one of the entities at issue on Plaintiffs’ declaratory relief claim, on which Plaintiffs prevailed. In so doing, Defendants took the position that the Award had not determined that Terra and the other entities were never transferred to the MOM JV’s. Defendants took this position notwithstanding the fact that, in the Partial Interim Award, the Arbitrator characterized Plaintiffs’ declaratory relief claim as seeking, *inter alia*, an Order that various entities, including Terra, “were never intended by the parties to be Contributed Entities to the JV....” See Ex. 1 (Partial Interim Award) at 43.

54. Because of Defendants’ position, Plaintiffs were compelled to seek clarification from the Arbitrator on his ruling on the declaratory relief claim. On May 12, 2025, the Arbitrator granted Plaintiffs’ request for clarification, stating expressly that “the Declaratory Relief Entities (including Terra Laguna Beach, Inc.) are not now and never have been owned by the MOM JV Entities.” See Ex. 5 (5/12/25 Order) at 2.⁸

55. On May 23, 2025, the Arbitrator issued the Attorney Fee Ruling, granting Plaintiffs’ post-hearing Motion for Attorneys’ Fees and Costs. In so doing, the Arbitrator ordered that Plaintiffs were entitled to recover from Defendants \$8,303,510.25 in attorney fees plus \$893,916.06 in costs, for a total of \$9,197,426.31. See Ex. 3 (Att’y Fee Ruling) at 12.

56. Most importantly, on May 23, 2025, the Arbitrator issued the Partial Final Award. The Partial Final Award is identical to the March 2025 Award, except that it also includes the Arbitrator’s decision on Plaintiffs’ motion for attorneys’ fees and costs. As set forth expressly in the Partial Final Award, the Award is to “be considered final, for purposes of a judicial proceeding to enforce, modify or vacate...” See Ex. 2 (Partial Final Award) at 46.

⁸ The Arbitrator’s May 12, 2025 Order is attached hereto as Ex. 5.

57. Plaintiffs intend to continue to pursue their rights and remedies for their now-proven claims against the Continuum Parties.

COUNT I
(Declaratory Judgment Under 11 U.S.C. § 541(d) Against the MOM JV Entities)

58. Plaintiffs incorporate all preceding allegations as if set forth fully herein.

59. Section 541(d) of the Bankruptcy Code provides, in relevant part, as follows:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section *only to the extent* of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d) (emphasis added).

60. Applicable state law determines a debtor's interest in property.

61. As alleged above, under California law, the MOM JV Entities do not hold any equitable or beneficial ownership interest in the Investco Membership Interests because such interests were procured by fraud perpetrated against the Honarkar Parties.

62. The Investco Membership Interests are the property of the Honarkar Parties and are not property of the Debtors' estates.

COUNT II
(Declaratory Judgment Under 11 U.S.C. § 541(d) Against the SPEs)

63. Plaintiffs incorporate all preceding allegations as if set forth fully herein.

64. Plaintiffs were fraudulently induced into transferring the Investco Membership Interests in the SPEs, which SPEs held title to the underlying Real Property, to the MOM JV Entities.

65. The SPEs held bare legal title to the Real Property prior to the filing of the Chapter 11 Cases, and held those interests in trust for Plaintiffs because of the fraud committed by the Continuum Parties.

66. The Real Peal Property is the property of the Honarkar Parties, and is not property of the Debtors' estates.

COUNT III
(Imposition of a Constructive Trust and Turnover of Any Sale Proceeds)

67. Plaintiffs incorporate all preceding allegations as if set forth fully herein.

68. Plaintiffs seek the imposition of a constructive trust upon the Investco Membership Interests and the Real Property currently held by the MOM JV Entities and the SPEs, respectively, for the benefit of Plaintiffs.

69. Federal and California State Courts will impose a constructive trust against a party that has engaged in inequitable conduct, such as fraud, or where holder of the legal title may not in good conscience retain the beneficial interest therein.

70. The principal circumstances where constructive trusts are imposed are set forth in California Civil Code Sections 2223 and 2224. Section 2223 provides that "[o]ne who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner." Section 2224 states that "[o]ne who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it."

71. "A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. The essence of the theory of constructive trust is to prevent unjust enrichment and to

prevent a person from taking advantage of his or her own wrongdoing.” *Communist Party of U.S. v. 522 Valencia, Inc.*, 35 Cal.App.4th 980, 990 (Cal. Ct. App. 1995) (internal citations omitted).

72. A party seeking imposition of a constructive trust must show (1) the existence of a *res* (property or some other interest in property), (2) the right to that *res*, and (3) the wrongful acquisition or detention of the *res* by another party who is not entitled to it. *Mattel, Inc. v. MGA Entertainment, Inc.* (citing *Communist Party of U.S.*, 35 Cal.App.4th at 990).

73. In the Partial Interim Award, the Arbitrator found that Plaintiffs proved that Makhijani, Continuum, and the MOM Members had fraudulently induced Plaintiffs into signing the agreements for the Joint Venture, and that the MOM Members and the MOM Managers breached their obligations under the MOM JV Entities’ operating agreements; accordingly, the Arbitrator determined that Plaintiffs are entitled to elect the alternative remedies of either compensatory damages or rescission of the Joint Venture agreements in addition to restitution and consequential damages, as well as the declaratory relief and accounting that they had requested, and attorneys’ fees and costs. Under California Civil Code Section 2224 “[o]ne who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.”

74. The Plaintiffs have sought relief from the bankruptcy stay in order to have the Partial Interim Award confirmed by the California Court.

75. In the event the Debtors sell any portion of the Real Property, the Honarkar Parties are entitled to any such sale proceeds and, after payment of all allowed secured claims related to such Real Property, such sale proceeds shall be held in trust for the benefit of whomever is

ultimately deemed to be the 100% owner of the Debtors after conclusion of the accounting and election of remedies in the Arbitration (the “**Sale Proceeds**”).

76. The Honarkar Parties are thus entitled to the immediate imposition of a constructive trust on the Investco Membership Interests and the Real Property currently held by the MOM JV Entities and the SPEs, and the turnover of same (as well as the turnover of any Sale Proceeds).

COUNT IV
(Turnover of Property Against all Defendants)

77. Plaintiffs incorporate all preceding allegations as if set forth fully herein.

78. Defendants are obligated to immediately transfer any remaining legal title they possess in the Investco Membership Interests and/or the Real Property to Plaintiffs, and to turn over any Sale Proceeds.

WHEREFORE, Plaintiffs respectfully request that the Court award the following relief:

a. Entry of a declaratory judgment stating that under §541(d) of the Bankruptcy Code and applicable California state law: (i) the MOM JV Entities’ estates do not have an equitable or beneficial ownership interest in the Investco Membership Interests; (ii) the SPEs’ estates do not have an equitable or beneficial ownership interest in the Real Property, (iii) that the Investco Membership Interests and the Real Property are not property of the Debtors’ estates, and (iv) that the Investco Membership Interests and the Real Property are property of the Honarkar Parties;

b. Entry of an order imposing a constructive trust upon the Investco Membership Interests and the Real Property (including any Sale Proceeds) currently held by the MOM JV Entities and the SPEs, respectively, for the benefit of Plaintiffs, and the immediate turnover of same;

c. Entry of an order requiring the MOM JV Entities and SPEs to immediately transfer any remaining legal title they possess in the Investco Membership Interests and the Real Property to Plaintiffs; and

d. Such other and further relief as the Court deems just and proper.

Dated: May 27, 2025
Wilmington, Delaware

POLSINELLI PC

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EXHIBIT 1

JAMS ARBITRATION
No. 5220003126
(Consolidated with JAMS Case No. 5200001122)

Mohammad Honarkar and 4G Wireless, Inc.,
individually and on behalf of MOM AS Investco LLC,
MOM BS Investco LLC, and MOM CA Investco
LLC,

Claimants and Derivative Claimants,

v.

Mahender Makhijani; Continuum Analytics, Inc.;
MOM AS Investor Group LLC; MOM BS Investor
Group LLC; MOM CA Investor Group LLC; MOM
AS Manager LLC; MOM BS Manager LLC; MOM
CA Manager LLC; and Nano Banc,

Respondents,

and,

MOM AS Investco LLC, MOM BS Investco LLC, and
MOM CA Investco LLC,

Nominal Respondents.

Consolidated case:

MOM AS Investco LLC, MOM BS Investco LLC,
MOM CA Investco LLC, MOM AS Investor Group
LLC, MOM BS Investor Group LLC, and MOM CA
Investor Group LLC,

Claimants,

v.

Mohammad Honarkar,

Respondent.

PARTIAL INTERIM AWARD

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Counsel for Claimant and Cross Respondent Mohammad Honarkar (“Honarkar”); Claimant 4G Wireless, Inc. (individually “4G,” and collectively with Honarkar, the “Claimants”); and Derivative Claimants MOM AS Investco LLC (“MOM AS JV”), MOM BS Investco LLC (“MOM BS JV”), MOM CA Investco LLC (“MOM CA JV”) (collectively, the “MOM JV Entities”)

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¹ At times, the Arbitrator will refer to the MOM Members and the MOM Managers as the “MOM Parties;” to the MOM Parties, Makhijani, and Continuum as the “MOM Respondents;” and to the MOM Respondents and Nano Banc as the “Respondents.” Allen Matkins also initially represented Makhijani and Continuum in this arbitration.

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Arbitrator:

Hon. David A. Thompson (Ret.)
JAMS
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Telephone: (714) 939-1300

Place of Arbitration: Los Angeles, California

Date of Award: February 21, 2025

THE UNDERSIGNED ARBITRATOR, having been designated by JAMS in accordance with the Operating Agreements (the “Operating Agreements”) for the MOM JV Entities, dated as of June 8, 2021, and having examined the claims, defenses, evidence, and arguments of the parties, now finds, concludes, rules, orders, and issues this Partial Interim Award as follows:

I. INTRODUCTION AND KEY PROCEDURAL HISTORY

This is a real estate joint venture dispute centered on fraud and breach of contract claims. The joint venture (“JV”) comprises a portfolio of commercial properties that were previously owned by Claimants and are now owned by the MOM JV Entities. The MOM JV Entities are managed by the MOM Managers, and the members of the MOM JV Entities are the MOM Members and Honarkar. Claimants filed the operative First Amended Statement of Claims in Arbitration (“FAC”) on October 13, 2023. Claimants claim they were fraudulently induced by Makhijani, Continuum, and the MOM Parties into signing the Operating Agreements (Exs. 313-315) and other JV related agreements (the “Other JV Related Agreements”),² and further claim Nano is liable for conspiracy to commit and aiding and abetting the commission of fraudulent inducement by the MOM Respondents. Claimants also claim the MOM Parties breached the Operating Agreements and a Management Agreement that predated the JV (Ex. 37, the “Management Agreement”). In addition, Claimants claim the MOM Respondents violated California’s forcible entry and detainer laws in connection with an incident at the 4G offices.

² The Other JV Related Agreements include: the June 8, 2021, Asset Contribution Agreement (Ex. 304, the “ACA”); the June 8, 2021, Release Agreement (Ex. 317, the “Release”); the June 07, 2021, Consulting Agreement (Ex. 232).

Finally, Claimants assert derivative claims on behalf of the MOM JV Entities (as Derivative Claimants) against Makhijani, Continuum, the MOM Parties, and Nano for conversion and violation of Penal Code section 496 (“Section 496”), for unjust enrichment against the MOM Parties, and for breach of contract against Nano based on the loan agreement between the MOM JV Entities and Nano.

Nano filed an Answer to the FAC on November 3, 2023. The MOM Parties and the MOM JV Entities (represented by Allen Matkins) and Makhijani and Continuum (represented by the Cohen Law Group) filed Answers to the FAC on November 21, 2023.

In a separate (now consolidated) demand for arbitration filed with JAMS on September 28, 2023, and amended on June 6, 2024, the MOM JV Entities and the MOM Members alleged (counter) claims against Honarkar for conversion, intentional interference with contractual relations and prospective economic advantage, and declaratory relief in connection with the parties’ rights and obligations under the Operating Agreements and other JV agreements. They also brought claims for trespass related to incidents at two JV properties in Laguna Beach.

On November 29, 2023, the MOM Respondents, Makhijani and Continuum filed Motions Contesting Arbitrability and Jurisdiction. Both motions were denied by the Arbitrator in the “Rulings on Motions Contesting Arbitrability” dated January 3, 2024.)

Other Pre-Hearing Proceedings, Orders and Rulings

Preliminary, interim, final status, and discovery conferences, motion hearings, and other pre-hearing proceedings were conducted on the following dates: February 2, March 15, March 20, March 22, May 25, May 29, and June 12, 2024. The Arbitrator issued Scheduling Order Nos. 1-5, and Consolidated Scheduling Order Nos. 100 and 101; and issued rulings on discovery disputes, claim amendments, hearing logistics, and motions to continue the arbitration hearing.

The Evidentiary Hearing

The evidentiary hearing was conducted on June 24-28 and July 1-12, 2024. The following witnesses testified: Honarkar, Brian Buchanan, Michael Kluchin (“Kluchin”), Makhijani, Kara Cobb, Marc Cohen, Glenn Taxman, Daniel Niazi, Anthony Gressak (“Gressak”), Michael Spindler (Claimant expert), Frederick Gartside, Joseph Pohlot (Respondent expert), Deba Shyam (“Shyam”), Max Prendergast, and Wayne Platt (Respondent expert). The documents and deposition transcripts in the Joint Admitted Exhibit List dated August 22, 2024, were admitted into evidence. The Hearing was reported by Katherine Thomas, CSR 14378.

At the conclusion of the evidentiary hearing, the parties confirmed there was no further evidence for the Arbitrator to consider. The parties filed simultaneous closing briefs as to their respective affirmative claims on August 23, 2024. The parties filed opposition and reply briefs on September 20, 2024, and October 4, 2024, in that order.

Virtual oral closing argument was conducted on December 17, 2024, and the matter was deemed “closed” by application of JAMS Rule 22(i) and by the agreement of the parties.³ Consistent with that agreement, pursuant to JAMS Rule 24(a), and for “good cause,” the Arbitrator determined the award would be rendered on or before February 28, 2025. (Notice of Award Due Date, dated January 10, 2025.)

II. FACTS

These factual findings are necessary to this Partial Interim Award. They are derived from admissions in the pleadings and the testimony, argument, and evidentiary exhibits presented at the hearing. All relevant evidence that has a tendency in reason to prove or disprove a fact of consequence to this decision has been considered, even if not specifically mentioned herein. To the extent that these findings differ from any party’s position, that difference is the result of determinations by the Arbitrator as to witness credibility, relevance, burdens of proof, legal principles, and weighing of the evidence, both oral and written.

Honarkar’s Cell Phone Business, Real Estate Business and Financial Distress

Shortly after Honarkar moved to the United States from Iran, in the mid-1980’s, he started a small business selling wireless cell phones. Honarkar built the cell phone business, which ultimately became 4G, into a highly successful enterprise that included 160 stores in five states. He currently owns 100% of 4G, though he sold the cell phone business assets of 4G to Verizon Wireless in January 2016.

With the proceeds from the sale of the cell phone business, Honarkar began amassing a real estate portfolio. Properties were purchased both in his name and through 4G and held by various limited liability companies (“LLCs”). Over time, Honarkar developed the portfolio into an operation worth several hundred million dollars. The properties ranged from large hotels to commercial real estate to individual homes used as luxury vacation rentals, most of which were located in Laguna Beach or Palm Desert and the surrounding areas.

By March 2020, COVID-19 surged and the global pandemic was declared. Over the following year, the pandemic had a devastating effect on the hospitality and commercial industries. Honarkar’s real estate businesses were similarly affected.

³ See 7.12 Tr. at 3940:21 through 3941:5, and the discussion which follows.

At that time, Honarkar was also involved in a contentious divorce. In July 2020, his former wife obtained the appointment of a receiver, Blake Alsbrook, to oversee Honarkar's properties. (Ex. 3905.) In addition to the effects of the pandemic, Alsbrook reported the infrastructure, staff, and systems in place were "woefully inadequate" to profitably operate the properties in the portfolio. (Ex. 2008, ¶¶ 9(a), 9(b).) He also reported the accounting and tax practices were inadequate and corporate formalities were generally ignored, pointing out the "brazen" movement of funds after a special report on interference had been submitted to the court. (*Id.*, ¶¶ 9(b), 71.) Most importantly, Alsbrook reported the "cash on hand was woefully insufficient to make the vast loan, payroll, creditor and settlement payments." (*Id.*, ¶ 9(b).) To resolve the dispute with his wife and to remove the receivership, Honarkar entered into a stipulated judgment to pay his former spouse \$17.5 million on or before June 12, 2021. (Ex. 2107.) Alsbrook was discharged as receiver in late December 2020.

Around that time, a loan from LoanCore Capital to Honarkar (the "LoanCore Loan") in the original principal amount of \$195 million dollars was coming due. The LoanCore Loan was secured by, among other things, deeds of trust encumbering the majority of Honarkar's real estate assets, as well as a personal guarantee. In December 2020, Honarkar failed to make a \$136 million balloon payment when due, and the LoanCore Loan went into default.

In January 2021, at the request of LoanCore, a new receiver, Douglas Wilson, was appointed over the Honarkar properties that secured the LoanCore Loan. (Ex. 3716, at 10-11, 13-17.) LoanCore obtained the receiver on the basis that Honarkar had been diverting rents from the properties in which LoanCore asserted it had a security interest. (Ex. 3716, at 8-9, 15.) The receivership was to be in place until Honarkar refinanced and paid off the LoanCore Loan.

A few months after Wilson was appointed as receiver, DIG PFSS LBCP Holding Company LLC ("DIG") purchased the LoanCore Loan. Honarkar and his team were concerned that DIG intended to foreclose on the properties that secured the LoanCore Loan. (Exs. 4085, at 182; 2411 at 4.) These concerns were legitimate. DIG immediately took action and foreclosure sales were scheduled to begin on June 15, 2021. (*Id.*)

Honarkar's Search for Funding and Introduction to Makhijani and Continuum

During the first half of 2021, under considerable time pressure as a result of the DIG purchase of the LoanCore Loan, the pending foreclosures, and the payment due to his former wife, Honarkar sought funding from multiple sources, including Nano. As expected, it was challenging for Honarkar to obtain financing, given the extraordinary time pressures, dollar amounts and risks involved, together with the uncertainties created by the pandemic.

Honarkar had previously borrowed money from Nano and had an existing relationship with Gressak, Nano's then-Chief Credit Officer (and later interim CEO). Gressak referred Honarkar to Makhijani at Continuum, an entity that acquires and manages distressed real estate assets for groups of investors. (Ex. 52.)

Both Makhijani and Continuum had established, long-standing, and deeply ingrained affiliations with Nano. Nano was founded by, among others, Continuum's legal owner, Shyam, along with several of Continuum's largest investors (Gerald Marcil, Andrew Stupin, and Bhajneet Singh Malik), all of whom provided millions in seed capital, remain shareholders in Nano, and have borrowed over \$100 million from the bank. (Ex. 1000 at 181:18-190:6.) Gressak, though no longer with Nano, remains a significant shareholder. (7.8 Tr. at 2609:22-25.) Makhijani is one of Nano's largest referral sources and is also involved in the bank's management. (Ex. 1000 at 200:20-203:3.) The relationships between Makhijani, Continuum, Nano, and their employees and investors including Shyam are interwoven and overlapping.

Ultimately, Nano and Continuum became the sole solution for Honarkar's financial difficulties. On May 19, 2021, Nano provided to Honarkar a letter of intent ("LOI") for a \$150 million loan to pay off the LoanCore Loan. (Ex. 106.) This loan was to be made by Nano and "participant banks" and be secured by deeds of trust on a number of Honarkar's properties. Though Gressak was actively signaling otherwise, Daniel F. Patrick, Nano's Person Most Knowledgeable ("PMK") witness testified (via deposition admitted into evidence) Nano was incapable of extending that amount of financing to anyone. (Compare Exs. 139 [Gressak May 21 email to Honarkar: "We are aware of foreclosure sales starting June 15th on the properties and we can close prior to that date"], 211 [Gressak June 3 email to Honarkar *et al.*, seeking update from Honarkar's counsel: "[W]e are ready to fund man!!!], and 171 [email thread with Gressak, Makhijani, Honarkar *et al.* on "imminent" refinance with \$150 million from Nano]; with Exs. 1000 at 40:9-41:6 [Patrick PMK testimony: \$150 million is "well beyond the bank's legal lending limit for a single loan"]; 7.8 Tr. at 2600:15-21 [Gressak testimony – "Q: And Nano Banc never would have approved Mr. Honarkar for a \$150 million loan, correct? A: Correct"].)

During this time, Honarkar was also negotiating the JV terms with Makhijani and Continuum. Most interesting, on May 20, 2021, one day after Nano provided the \$150 million LOI to Honarkar, Nano provided to Shyam an LOI for a \$20 million loan (the "Nano Loan") to the MOM JV Entities, entities that had not yet been formed, and the proceeds of the \$20 million Nano Loan were to be used to help pay off the LoanCore Loan. (Ex. 130.) The \$20 million Nano Loan was to be secured by an assignment of membership interests in 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC, and "abundance of caution" deeds of trusts encumbering properties held by these four subsidiary LLCs, all of which were then wholly owned by Claimants. (*Id.* at 2.) At that time there were no agreements between Honarkar and any of the MOM Respondents.

The Term Sheet

On May 24, 2021, just days after Nano issued the \$20 million Nano Loan LOI to Shyam, Honarkar, 4G, and Continuum entered into the Term Sheet for the JV. (Ex. 148, the “Term Sheet”.) It was signed by Honarkar on behalf of 4G and by Makhijani on behalf of Continuum.

The Term Sheet contemplated an initial capital contribution of \$35 million by Continuum, characterized as “cash equity,” in addition to Continuum’s obligation to secure refinancing to pay off the balance of the LoanCore Loan, then estimated at \$140 million. (Ex. 148 at 2.) The initial contribution by Continuum was to be credited to two existing projects in Honarkar’s portfolio, Hotel Laguna, and a property in Los Angeles’ Koreatown, though both Honarkar and Kluchin, Director of Operations at Continuum, testified that half of the initial contribution (\$17.5 million) was first intended to be used to pay off the stipulated judgment in favor of Honarkar’s former wife. (*Id.*; 6.24 Tr. at 108:11-109.4; 6.28 Tr. at 1214:6-15.)

In exchange, Claimants were obligated to contribute their interests in the subsidiary LLCs that held title to some of the properties in their portfolio. (Ex. 148 at 2, Exs. A and C.) The Term sheet was binding on Honarkar but not Continuum. (Ex. 148 at 8-10.) So, Continuum could terminate at any time, but Honarkar could not pursue other refinancing options.

Aside from the Hotel Laguna and Koreatown projects, Honarkar was entitled to sell and/or refinance the other real estate assets covered by the Term Sheet, subject to Continuum’s qualified consent rights. (Ex. 148 at 8 [Managers provision].) Further, assuming Continuum received a 20% preferred return on all of its capital contributions, Honarkar was entitled to the entirety of the sale proceeds of those other assets. (*Id.* at 4-6 [Distributions provision].)

The Draft Operating Agreements

Glenn Taxman, Honarkar’s transactional counsel, offered to provide initial drafts of the Operating Agreements, but Continuum’s lawyers took the lead instead. On May 28, 2021, Kluchin shared draft Operating Agreements, not with Honarkar but with First Choice Bank, one of the banks through which Continuum was seeking financing to pay off the LoanCore Loan. (Ex. 1479 [attachments include MOM Manager Operating Agreements].) Kluchin did not send Honarkar and Taxman draft Operating Agreements until June 2, 2021. (Ex. 191.)

Everyone agrees the JV document negotiation and drafting process was chaotic and frantic. Kluchin pressured Honarkar into signing early, before the documents were finalized. (*E.g.*, Ex. 288 [Kluchin to Honarkar team – “We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap with the understanding the JV is not final until both attorneys...send final versions of the full agreements”]; Exs. 347, 352.)

There was a constant flurry of emails back and forth between the parties and their respective counsel, in which it was unclear whether comments from Honarkar's side had been acknowledged and/or incorporated in existing drafts or if comments from Honarkar's side had even been solicited. All of this confused the process further and caused additional delay. (Ex. 0217 at 2-3 [Taxman to Kluchin – "Why are you sending us a different JV Agreement now?...We are sticking with the prior document you sent to us for negotiating purposes...My partner is already 80% thru the other draft....[This] makes zero sense and it actually delays the process...I am going to run a redline of what [Kluchin] originally sent against this new document..."]; Ex. 2382 at 3 [Taxman to Continuum "Guys, time to cut to the chase here if we have any chance of getting to final documents. Please include your outside counsel on an email to us so we can deal directly with them. [Kluchin] playing middleman is slowing down the process and getting a redline of Document A vs. Document B is not helping the process""].)

Admittedly, the process included "lots of moving targets." (Ex. 217 at 3 [email from Makhijani to Taxman and Honarkar].) Many of the documents were approved piecemeal. The initial drafts of the Operating Agreements had blank or incomplete exhibits. (Compare Exs. 191 at 38-41; 276 at 14-18; 298 at 17-21, with Ex. 315 at 40-46.) Plus, Exhibit C to the draft Operating Agreements was supposed to list Honarkar's "Other Owned LLC's" to be contributed to the JV. (Ex. 315 at 43.) But Exhibit C was not finalized and sent to Honarkar and his team until after 11pm on June 7, 2021, the night before the JV formation and LoanCore refinancing closing date. (Ex. 2554.) To populate Exhibit C, Makhijani used a comprehensive list of entities owned by and affiliated with Honarkar's businesses provided by Dan Niazi, 4G's Chief Operating Officer, earlier that day, on June 7, 2021. (Ex. 1397.) According to Honarkar and Niazi, that list was provided only for the Continuum investor's due diligence purposes, not as a final inventory of contributed entities. (6.24 Tr. at 128:25-131:25; 7.5 Tr. at 2467:17-2471:13.)

The Final Operating Agreements

Because Continuum was unable to secure enough financing to pay off the LoanCore Loan, Makhijani proposed that Continuum reduce its initial contribution to \$30 million, and use it to "close the gap," despite Continuum's \$35 million initial contribution obligation in the Term Sheet. (Exs. 2411, 385; 6.24 Tr. at 139:7-141:6.) Honarkar testified these changes in the initial contribution terms prevented him from paying off his former spouse as agreed, and resulted in his loss of their former residence. (6.24 Tr. at 152:14-153:24.)

Still, the Operating Agreements were signed and the MOM JV Entities were formed on June 8, 2021. (Exs. 313 [MOM AS JV]; 314 [MOM BS JV]; 315 [MOM CA JV].) That same day, the parties also closed escrow on the LoanCore Loan refinancing. (Ex. 308.) The refinancing Escrow Closing Statement showed two separate wire transfers from Continuum to the escrow holder: one in the amount of \$20 million and one in the amount of \$10 million. (*Id.*)

The Operating Agreements are substantially similar and the pertinent provisions include:⁴

(1) The parties to the MOM CA JV Operating Agreement are the MOM CA Manager as the Managing Manager, the MOM CA Member as the MOM Member, and Honarkar as the MO Member and the Administrative Manager.⁵ (Ex. 315 at 6; §§ 9.1, 9.2, 9.3.) Honarkar signed for himself. Shyam signed as the Manager of the MOM CA Manager on behalf of both the MOM CA Manager and the MOM CA Member. (Ex. 315 at 38.)⁶

(2) The MOM CA JV Operating Agreement obligated the MOM CA Member to make a \$30 million “Contribution” to be used “for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B...” (Ex. 315 at § 6.1(c) [“Initial Contributions”].) Exhibit B in turn stated, “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (*Id.* at Ex. B [Disbursement of Contribution for Hotel Laguna Project].) “Contribution” was defined as “money or property, or a promissory note or other binding obligation to contribute money or property” that a “Member contributes ... as capital.” (*Id.* at § 1.19.) But loans by the MOM CA Member “shall not be considered Contributions for purposes of this Agreement.” (*Id.* at § 6.5.)

(3) The Operating Agreements required Honarkar to contribute certain LLCs he and 4G owned or controlled, defined as either “Subsidiaries/Other Owned LLCs” or “Projects.” (Ex. 315 at §§ 1.40, 1.48, 1.45, 6.1(a), Ex. C.) For the MOM CA JV, the only identified “Project” was the Hotel Laguna Project. (*Id.* at § 1.45.) Each of the other listed entities was a “Subsidiary/Other Owned LLC.” (*Id.* at Exs. C, D.) Makhijani and Continuum through the MOM Member had the discretion to make a capital contribution to a “Subsidiary/Other Owned LLC” property and convert it to a “Project” under the Operating Agreement. (*Id.* at § 6.1.)

(4) The Managing Member was not entitled to sell the assets of or ownership interests in the “Subsidiary/Other Owned LLCs” absent Honarkar’s prior written consent, unless Honarkar was in default, as defined. (Ex. 315 at §§ 9.3(b), 1.36.)

(5) Self-dealing transactions were prohibited without the written consent of both the Managing Manager and the Administrative Manager. (Ex. 315 at § 9.15.)

⁴ The Arbitrator will use the MOM CA JV Operating Agreement as the reference agreement. (Ex. 315.) The material terms of the MOM AS JV and MOM BS JV Operating Agreements are substantially similar.

⁵ On July 14, 2022, the parties executed a Letter Agreement (the “Letter Agreement”) amending the Operating Agreements to clarify that 4G was the MO Member of the MOM JV Entities, not Honarkar personally. (Ex. 583 at § 3 [“It was intended for 4G and not [Honarkar] to be the MO Member of the Companies. Accordingly, the Salient Documents shall be deemed amended so that the MO Member is 4G without any further action by the parties”].)

⁶ Similarly, Banayotis Haddad, a Continuum employee, signed the MOM AS JV Operating Agreement as the Manager of the MOM AS Manager on behalf of both the MOM AS Manager and the MOM AS Member. (Ex. 313 at 39.) And Jason Miller signed the MOM BS JV Operating Agreement as the Manager of the MOM BS Manager on behalf of the MOM BS Manager and the MOM BS Member. (Ex. 314 at 38.)

(6) The Managing Manager was required to keep “full and accurate books and records” for the MOM JV Entities, reflecting “all of the income, expenses and transactions.” (Ex. 315 at § 12.1.) The Managing Manager was also required to provide monthly and annual financial reports, including balance sheets, profit and loss statements, and tax returns. (*Id.* at § 12.2.)

That same day, Honarkar and the MOM Managers also executed the ACA, restructuring and contributing Honarkar’s and 4G’s membership interests in the Other Owned LLCs to the MOM JV Entities. (Ex. 304 at § 2.) The ACA specified certain entities (the “Held-Back LLCs”) were not subject to restructuring or contribution by Honarkar. (*Id.* at Ex. E.) But according to Honarkar, the Operating Agreements mistakenly list multiple properties as Other Owned LLCs.⁷ (*E.g.*, Exs. 304, 315 at 43 [listing 4G itself and Modan LLC, which is owned by Niazi].⁸)

Once the Operating Agreements were executed, Continuum assumed control of the MOM JV Entities’ bank accounts, as well as the bank accounts of the Other Owned LLCs. Honarkar continued the day-to-day business operations of the Other Owned LLCs.

Continuum’s Alleged Wrongdoing in Operating the JV

Less than one month after the MOM JV Entities were formed, on or around July 1, 2021, Continuum caused Tesoro Redlands DE LLC (“Tesoro Redlands”), an Other Owned LLC,⁹ to obtain a \$1 million loan (the “Tesoro Loan”) from Nano. (Exs. 403, 409, 411.) That same day, one of the MOM investors, Enrico Arvielo, was repaid his \$3 million investment in one of the MOM Members. (Ex. 405.) The Tesoro Loan was secured by a deed of trust encumbering real property owned by Tesoro Redlands, which was not recorded until March 2022. (*Id.*) When Honarkar’s staff received a monthly billing statement for the Tesoro Loan on September 23, 2021, an employee of Nano indicated it was “a billing error and not applicable to Tesoro.” (Ex. 2723.) Honarkar was not involved in or aware of the Tesoro Loan. (Ex. 488 [Tesoro Loan not included in list of JV loans sent to Honarkar in Dec. 2021]; 6.27 Tr. at 960:14-961:7.)

⁷ Notably, in September 2022 Kluchin sent a list of the “Contributed Entities” to an outside accounting firm to prepare the MOM JV Entities’ 2021 tax returns, but he did not include 4G, Modan LLC, BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing82 LLC, or Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

⁸ 6.24 Tr. at 130:10-17; 7.5 Tr. at 2469:16-2470:1; Ex. 622 [Kluchin email to Nano – “Modan LLC account has nothing to do with Continuum or 4G. This account belongs only to Dan Niazi”].

⁹ Tesoro Redlands is owned by Tesoro Redlands LLC, an Other Owned LLC/Subsidiary of the MOM JV Entities. (Ex. 279 at 2; Ex. 315 at 43.)

In early 2022, Honarkar proposed a sale of Tesoro Redlands, intending to use the proceeds to pay off debts owed to Makhijani/Continuum and other obligations. (Exs. 527, 533.) Makhijani refused to consent to the sale and instead refinanced the Tesoro Loan with Preferred Bank. (Exs. 530, 531, 533.) Though Honarkar ultimately consented to the Preferred Bank refinancing on February 25, 2022, conditioned upon his ability to sell the property after the refinance, Makhijani and Shyam (on behalf of the MOM CA Manager and MOM CA Member) set up the refinance and signed the relevant documents on February 22, 2022, prior to Honarkar's consent. (Exs. 529, 531, 533, 535.) Honarkar testified he was not informed where the refinance proceeds went and did not receive documentation relating to the refinance until over six months later. (Ex. 602 [email from Taxman on September 27, 2022 – "Mo has zero idea as to the amount of the refinance proceeds, the terms of the refinance loan and the use of the proceeds"].)

The evidence shows that when the Tesoro Redlands refinance with Preferred Bank closed on February 24, 2022, only some of the \$39 million in proceeds were used to pay off existing debt. (Ex. 530.) Approximately \$8.8 million was listed as a cash-out to the borrower, and \$8.8 million was transferred directly into the Continuum bank account from the Tesoro Redlands bank account on March 1, 2022. (Ex. 541.) In addition, \$2.8 million was held back by escrow and four months later transferred from the Tesoro Redlands bank account to the Continuum bank account. (Ex. 2894; 7.2 Tr. at 1528:5-1531:19.) It is unclear why these funds were transferred to Continuum or for what purpose they were ultimately used.

On April 10, 2022, the MOM Respondents sold a tenant-in-common (TIC) interest in Hotel Laguna, LLC for \$1 million to Jaachak LLC ("Jaachak"), an entity owned and controlled by Continuum executive Jaspreet Singh Sethi. (Exs. 546, 549, 817; 6.27 Tr. at 983:19-990:17.) The TIC sale was consummated without using an escrow. Marc Cohen's client trust account was used instead because the trust company would not wire the sale proceeds to Continuum, which was not a party to the transaction. (Ex. 555 at 3-4; Ex. 558.) Upon receipt, Cohen sent the proceeds to Continuum. (Ex. 558; 7.5 Tr. at 2273:3-2280:14.) Both Honarkar and Niazi testified they were unaware of this transaction and did not receive any proceeds from it. In fact, the proceeds of the sale went directly to the MOM Members. (7.2 Tr. at 1766:6-1767:20 [Makhijani testimony that \$1 million in TIC proceeds became Jaachak's capital contribution to a MOM Member].)

According to Honarkar and his attorney, Taxman, lack of transparency was a common theme in dealing with the MOM Respondents. Even when Honarkar and his team requested information, it seemed the complete financial picture was rarely provided. Taxman testified "[e]very time we met, we asked for information; we asked for financials. It was promised; it was never given. It was – you felt like Charlie Brown trying to kick the ball and Lucy pulling it up." (Tr. 7.5 at 2334:4-19.)

Also, Kluchin directed Nano to establish bank accounts for the LLCs contributed to the MOM JV Entities and to restrict access to Honarkar and his team. On October 29, 2021, Kluchin directed Nano to “set up a new The Masters Building, LLC [account]. Signers are [Shyam] and me. No one from 4G should be on this account. This is very important. [Honarkar], Chi Lu [4G’s Controller] – no one. Only [Shyam] and I...Again no one from 4G should see or be on this account.” (Ex. 473; Ex. 590 [September 2022 email from Kluchin to Nano – “Note DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread”].)

Honarkar’s Alleged Discovery of the Nano Loan

The Nano Loan closed and funded on June 7, 2021, one day prior to the effective date of the Operating Agreements and thus one day prior to the formation of the MOM JV Entities, and on that date all of the JV properties and subsidiary LLCs were still wholly owned by Claimants. The \$20 million Nano Loan proceeds were deposited in a Continuum bank account and then transferred to escrow that same day. (Ex. 240 [Memorandum to Nano Loan Committee - “proceeds will need to be funded into a related DDA account (not owned by the Borrower) held at the Banc, Continuum Analytics...Nano Banc CCO, ... Gressak, has spoken with the Borrower and has approved the funding of the account”]; Ex. 308 [June 8, 2021 escrow statement with two separate Continuum payments in the amount of \$10 million and \$20 million].)

In early 2023, Honarkar began exploring options to exit the JV. In seeking alternative financing, on February 9, 2023, Honarkar discovered a deed of trust on one of the MOM JV Entities’ properties, dated June 7, 2021, and securing the \$20 million Nano Loan. (Ex. 656.) According to Honarkar, once he received the deed of trust, he ran title searches on the other properties in the MOM JV Entities. He then discovered the \$30 million initial contribution the MOM Members were obligated to make under the Operating Agreements had been funded in part by the \$20 million Nano Loan obtained in the name of the MOM JV Entities themselves; and further, that the Nano Loan was secured by assignments of the MOM JV Entities membership interests in the four subsidiary LLCs,¹⁰ and by deeds of trust encumbering properties owned by these subsidiary LLCs.¹¹ (Ex. 239 at 78-82, 88-127; Exs. 234, 235, 236.)

On February 20, 2023, Honarkar sent a letter to Makhijani and Continuum, raising his concerns about several recorded instruments discovered as a result of the title searches, including deeds of trust relating to the Nano Loan, the Tesoro Loan, and loans from the Cantor Group V, and memoranda related to TIC transactions. (Ex. 659.) According to Honarkar, he received no response or further information pertaining to the issues raised in this letter.

¹⁰ These are 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC.

¹¹ In these respects, the structure of the Nano Loan was similar to the structure of the loans from the other three lenders who participated in the LoanCore refinance (First Choice, Preferred, and Lone Oak).

On March 22, 2023, Honarkar's then-counsel (Latham & Watkins LLP) sent a formal books and records demand for each of the MOM JV Entities, seeking basic financial and transactional documents pursuant to the Operating Agreements. (Exs. 661-663.) On April 3, 2023, Respondents indicated they would provide documentation related to the \$20 million Nano Loan only if Honarkar provided "a letter withdrawing the inspection demands." (Ex. 5480.) Honarkar refused. And, on April 27, 2023, Honarkar filed a Petition to Compel Books and Records in Los Angeles Superior Court, which Respondents opposed. (Ex. 1377.) Ultimately, on November 9, 2023, Judge James C. Chalfant granted Honarkar's Petition. (*Id.*)

Honarkar's Demand for Arbitration

On April 25, 2023, Honarkar filed his original Demand and Statement of Claim in this arbitration, seeking the rescission of the Operating Agreements or, in the alternative, the appointment of a receiver over the MOM JV Entities, along with compensatory and punitive damages, a declaratory judgment regarding the Other Owned LLCs, and an injunction reinstating Honarkar as Administrative Manager to protect his ownership interests.

The MOM Respondents' Alleged Retaliation Against Honarkar

Almost immediately following Honarkar's demand for books and records, on March 29, 2023, Makhijani, Continuum, and the MOM Parties utilized their power as Managing Managers and terminated Honarkar as the Administrative Manager of the MOM JV Entities. (Exs. 669-671, 3018.) The letters terminating Honarkar were drafted and sent by Marc Cohen, Esq., current counsel for Makhijani and Continuum in this arbitration. (*Id.*)

Two days later, a group of armed individuals working on behalf of Continuum and Makhijani entered and took control of numerous JV properties, including the Hotel Laguna, a Holiday Inn Hotel in Laguna Beach, and several other vacation rentals. (Exs. 681, 1196, 1198.)

In early May 2023, Honarkar returned to the Hotel Laguna, and there was a confrontation between Makhijani, Kluchin, and the MOM Respondents' agents. (Ex. 1165 [video of portion of incident, Makhijani stating "I'll put 32 fucking guards here"]; Ex. 1160 [video of portion of incident].) Each side blames the other, but the only person arrested that day was Banayotis Haddad, a Continuum employee and the Manager of MOM AS Manager, who was charged with assault. (Ex. 1305; 6.24 Tr. at 202:3-21; 7.2 Tr. at 1800:4-9.)

Both Honarkar and Kluchin also testified that, during the night of June 30, 2023 and the early morning of July 1, 2023, a group of armed individuals and other agents working on behalf of Continuum and Makhijani entered and took physical control of Terra (a restaurant located at the Laguna Festival of the Arts and operated by Honarkar for years).

On the afternoon of July 24, 2023, while Honarkar and the MOM Respondents were appearing before Orange County Superior Court Judge David J. Hesseltine arguing motions for injunctive relief, Kluchin, Haddad, and Jason Miller, along with more than a dozen men dressed in black broke into the 4G corporate headquarters, where both 4G and Honarkar maintained offices, while Honarkar's team was working. (Ex. 773 [police report].) A glass door located on the side of the building was shattered with a hammer to gain entry and the double doors at the front entrance were forced open. (*Id.* at 4; Ex. 1212.) Kluchin admitted he and his team broke into the offices. Video of the incident appears to show the MOM Respondents' agents removing documents, banker's boxes of hardcopy files labelled "LEGAL," computer equipment, and other objects from the office, including employees' personal effects. (Ex. 1158.)

On July 29, 2023, the MOM Respondents served eviction notices on Honarkar and both of his daughters at their residences, which were JV properties under the Operating Agreements. (Ex. 772 at 4-8.) In addition, Respondents initiated multiple eviction proceedings against tenants leasing other JV properties. According to Kluchin, these eviction notices and proceedings were instituted against those tenants for not paying rent directly to the MOM Respondents.

Also, during this time, the MOM Respondents hired mobile billboards to drive around Laguna Beach, displaying pictures of Honarkar with disparaging messages. One of the billboards included photos of police officer Jessie Schmidt (one of the officers present at the scene of the 4G offices break-in) and Shohreh Dupuis (city manager for the City of Laguna Beach), along with Honarkar's photo and the word "CORRUPTION??" in large bold capital letters. (Ex. 11506.27 Tr. [Kluchin testimony – "Our PR consultant worked on this [billboard] and suggested it, and we approved it because we believe it to be true"].) According to the MOM Respondents' testimony, they included Schmidt and Dupuis on the billboard because they felt Dupuis was "allow[ing] Mo [Honarkar] to get away with a lot [of] things that he probably shouldn't have" (Kluchin, 6.27 Tr. at 1049:6-9) and the police were "not protecting our rights to manage the property" (Makhijani, 7.2 Tr. at 1811:2-21).

Additional facts are set out in the analysis and discussion that follows.

III. ANALYSIS

The fraud and other non-contractual claims are governed by California law. The claims for breach of the Operating Agreements are governed by Delaware law. (*e.g.*, Ex. 315 at § 19.1.) The claim for breach of the Management Agreement is governed by California law. (Ex. 37 at § 13.4.) The parties bear the burden of proof on their respective claims and defenses by a preponderance of the evidence, except for the punitive damages claim, which requires clear and convincing evidence. (Civ. Code § 3294.) The JAMS Comprehensive Arbitration Rules apply.

A. Claimants' Direct Fraudulent Inducement Claim Against Makhijani, Continuum and the MOM Members (FAC at 22-23)

Claimants allege they were fraudulently induced by Makhijani, Continuum and the MOM Members (i.e., the MOM Respondents) into signing the Operating Agreements by the MOM Respondents' promise to make a \$30 million initial contribution. They assert the MOM Respondents had no intent to perform the promise when they made it, and it was not performed.

The MOM Respondents argue the promise was performed because the Operating Agreements allowed them to use the \$20 million Nano Loan to fund part of the \$30 million initial contribution obligation.¹² They also insist Honarkar was informed about the Nano Loan and about commitments the MOM Members made to pay off the Nano Loan.

"Promissory fraud [aka fraudulent inducement] is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973.)¹³ "[P]romissory fraud requires proof of (1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promisee." (*Gruber v. Gruber* (2020) 48 Cal. App. 5th 529, 540.)

1. Initial Contribution Promise

It is undisputed the MOM Members promised to make the \$30 million initial contribution to the MOM JV Entities. (Ex. 315, § 6.1 [MOM CA Operating Agreement]; Ex. 148 at 2 [Term Sheet].) The required *form* of the initial contribution is the crux of this dispute. The Arbitrator's analysis will begin with the plain, unambiguous language of the Operating Agreements.

Recall the term "Contribution" is defined generally in the Operating Agreements as "any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement." (Ex. 315, § 1.19.) That defined term is used in connection with both Initial Contributions and Additional Contributions (compare Ex. 315, §§ 6.1 and 6.2) and throughout the Operating Agreements.

¹² Continuum also deposited \$10 million in escrow but \$3.9 million of that was immediately refunded. (Ex. 308.)

¹³ For simplicity internal citations and quotation marks have been omitted from case quotations throughout.

The MOM CA JV Operating Agreement specifically states: “6.1 Initial Contributions. ... [¶] (c) Concurrently with execution hereof, by all of the Members, the MOM [CA] Member shall make a Contribution of \$30 million to the Company for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B attached hereto.” (Ex. 315, § 6.1(c).) Exhibit B, titled “Disbursement of Contribution for Hotel Laguna Project,” states it shall be used to: “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (Ex. 315 at Ex. B.)

Reading these sections together reveals the term “Contribution,” defined generally in Section 1.19, is also subject to the specific requirements of Section 6.1. (*Kirkwood Knoll Maint. Corp. v. Warren* (Del. Com. Pls. Apr. 21, 2016) C.A. No. CPU4-14-003607, 2017 WL 8999315 at *5.) Thus, the MOM Member’s \$30 million *initial* Contribution had to be made June 8, 2021 (upon execution) in a form that could be disbursed to fund shortfalls in the LoanCore Loan refinance that same day. There is no other way to give meaning to both sections as required.

And the Nano Loan transaction itself did not satisfy the initial contribution obligation.

As a threshold matter, it appears the Nano Loan transaction was unauthorized and the Nano Loan documents are therefore invalid. This is true because on the day the Nano Loan closed and funded, June 7, 2021: (a) the putative Nano Loan borrowers – the MOM JV Entities – did not yet exist; (b) the Term Sheet was still in effect; (c) the JV properties and the membership interests in the subsidiary LLCs that owned them still belonged to Claimants; and (d) neither the MOM Managers, nor any other MOM Respondents, including Continuum, had any authority to encumber those properties or to assign those membership interests.

Even if the Nano Loan transaction was authorized and the Nano Loan documents are valid, the Nano Loan itself was not a “Contribution” by the “MOM CA Member” (MOM CA Investor Group LLC) to the “Company” (MOM CA Investco LLC) “as capital in that Member’s capacity as a Member pursuant to this [Operating] Agreement.” (Ex. 315, §§ 1.19, 6.1.) In fact, the MOM CA Member was not even a party to the Nano Loan transaction. Besides, nothing in either the Term Sheet or the Operating Agreements authorized the MOM Members to make the initial contribution in the form of a loan from Nano to the MOM JV Entities secured by their own assets. In short, Makhijani and Continuum used Claimants’ assets to secure the Nano Loan, and used the Nano Loan proceeds to acquire an interest in and gain control of those same assets.

Perhaps recognizing the Nano Loan transaction itself did not satisfy the initial contribution obligation, the MOM Respondents argue it was satisfied because they made a binding oral promise the MOM Members (not the MOM JV Entities) would pay the Nano Loan; and that the oral promise was memorialized in a “Contribution Agreement” (Ex. 2433.) The substance of the promise was the MOM Members would “step in and pay” the Nano Loan upon “the earlier of the Maturity Date or any date on which [Nano] demands” payment. (*Id.* at 1.)

If the oral promise was made and if the Contribution Agreement is genuine, neither satisfied the initial contribution obligation, because neither obligated the MOM Members to make any payment on June 8, 2021. And any payment made or to be made after that date could not be used to fund shortfalls in the refinance of the LoanCore debt on that date.¹⁴ What's more, even now the MOM JV Entities still owe Nano \$20 million and the Nano Loan is still secured by the Nano Loan trust deeds and assignments of subsidiary LLC membership interests. So, the MOM JV entities are still at risk of losing their assets if the MOM Members fail to pay.

In any event, there is substantial reason to doubt the oral promise was made and the Contribution Agreement is genuine.

The MOM Respondents maintain the oral promise to pay the Nano Loan was made at in-person meetings with Honarkar before the JV was formed. Specifically, they note: Makhijani testified he informed Honarkar of this commitment (7.2 Tr. at 1897:3-1899:12; 7.3 Tr. 2018:24-2021:22); Kluchin testified it was explained to Honarkar during a meeting at the Corona del Mar restaurant (the "CdM Meeting") that flexibility was needed and that it would be the MOM Members' "binding obligation and promise to pay the loan" (6.28 Tr. at 1205:18 – 1507:7); Gressak testified "part of those discussions [at the CdM Meeting] was talking about how the MOM investors – with this [Nano] loan, and it would pay for the loan" (7.8 Tr. at 2548:13-16); Prendergast, a Nano employee, testified Honarkar was informed at the CdM Meeting the contribution would be made either in cash or through a loan (7.12 Tr. at 3714:14 – 3715:24.1); Prendergast testified about another meeting at the Montage (the "Montage Meeting"), where Honarkar was informed of the Nano Loan and that it would be used to refinance the LoanCore obligation (7.12 Tr. at 3716:16 – 3719:17); and finally, Kluchin and Gressak both testified there was also a meeting at Honarkar's house on June 6, 2021 where the matter was discussed. (7.3 Tr. at 2018:24-2021:22; 6.27 Tr. at 1057:12-1059:4; 7.8 at 2550:18-2552:21.)

But the testimony about these meetings and the oral promise was not credible. Regarding the CDM Meeting, the witnesses contradicted each other in parts. For example, Makhijani, Kluchin, and Gressak insisted Makhijani drew a diagram of the Nano Loan on a napkin and described it to Honarkar. But Prendergast remembered only that the diagram related to dilution of the MOM Members' capital percentages, an issue unrelated to the oral promise or the initial contribution. (7.12 Tr. at 3805:4-3808:12.) As for the Montage Meeting, no witness other than Prendergast even mentioned it. Plus, as the Arbitrator observed several times during the hearing, based on basic witness credibility considerations, Kluchin, Makhijani, and Gressak were just not credible. (CACI 107 [Witness Credibility]; 7.1 Tr. at 1572:15-19 [re Kluchin]; 7.8 Tr. at 2506:3-2507:22 [re Kluchin and Makhijani]; 7.8 Tr. at 2773:8-13 [re Gressak].)

¹⁴ For these same reasons, the Arbitrator rejects the MOM Respondents' claim additional funds they "infused" into the JV after June 8, 2021, satisfied the initial contribution obligation. Besides, there is insufficient evidence in the record establishing the form or amount of these infusions, by whom they were made, or where funds came from.

These credibility findings about the oral promise testimony are buttressed by the Respondents' pre-hearing verified discovery responses and deposition testimony. The initial interrogatory responses of Makhijani, Continuum, and Nano made only general statements that Honarkar was aware of the Nano Loan "through conversations with Responding Parties and Nano Banc." (Ex. 950 at 004-005; Exs. 937 at 007, 949 at 007.) They made no mention of any specific conversations where the Nano Loan was disclosed to Honarkar. Later, Nano's PMK deposition witness testified he was not aware of any written or oral communications with Honarkar about the Nano Loan. (Ex. 1000 at 93:21-94:11.) Still later, Makhijani made no mention of the CdM Meeting in his PMK deposition for Continuum. (Ex. 1009 at 39:25-40:10.) Then, less than a week before the hearing, Nano's second supplemental interrogatory responses mentioned the CdM Meeting and the napkin diagram for the first time. (Ex. 1527.)

These credibility findings are also supported by the fact that there is no evidence of any written communications to Honarkar or his team at any time discussing the oral promise, nor are there any internal written communications between Honarkar and his team about the oral promise. Finally, Honarkar, Niazi, and Taxman all testified they were not aware of the Nano Loan until 2023. (6.24 Tr. at 169:22-178:14, 247:23-248:4 (Honarkar); 7.5 Tr. at 2301:4-2302:1 (Taxman), 2481:24-2483:14 (Niazi); 7.8 Tr. at 2526:5-2528:12 (Niazi); Exs. 656, 664, 659-63.)

In total, the weight of the evidence supports finding the oral promise was not made.

Turning to the Contribution Agreement, Kluchin testified he drafted it in "the morning of June 7, 2021." (6.28 Tr. at 1208:14-21, 1208:14-1209:7; 7.1 Tr. at 1544:13-1547:21.) He also testified it "was printed out, so it was signed in the office," "on June 7th" and was "signed in person and then scanned" the same day. (7.1 Tr. at 1544:13-16, 1548:18-1550:25.) Makhijani testified it was signed "mid-morning time on June 7" and that it was signed either using "a pen or a stamp." (7.2 Tr. at 1699:22-1701:25; 7.1 Tr. at 1548:22-1551:9.) But their testimony about the existence, creation, and execution of the Contribution Agreement is not credible.

There is no contemporaneous evidence the Contribution Agreement existed as of June 7, 2021. There are no written communications (emails, texts, or memoranda) about it. (7.1 Tr. at 1544:13-16, 1554:15-1557:7.) The MOM Respondents admit they never shared it with Honarkar or Nano. (6.28 Tr. at 1208:14-1210:15; 7.1 Tr. at 1544:13-1554:22; 6.24 Tr. at 254:23-255:22.) And they did not assert it existed until July 2023, months after the litigation began.

At the hearing, when Claimants proffered a handwriting expert to testify the signatures on the Contribution Agreement were placed by electronic means, not by pen or stamp (7.7.24 Joint Letter), the MOM Respondents stipulated, contrary to Kluchin and Makhijani's testimony about it being printed, signed, and scanned on June 7, 2021, "the signatures on the Contribution Agreement were placed onto the document by electronic means." (7.12.24 Stipulation.)

The text of the Contribution Agreement also suggests it could not have existed and been signed in the mid-morning of June 7, as Kluchin and Makhijani testified, because Paragraph 2 refers to the final Operating Agreement's definition of Contribution in "Section 1.19." But on the morning of June 7, the draft Operating Agreements had the definition of "Contribution" in section 1.20—not section 1.19. (Ex. 1505 at 001, 023 [draft circulated at 12:58 p.m. on 6.7.21]; 7.10 Tr. at 3261:13-3263:5 [Gartside testified Exhibit 1505 was then-current draft].) Moreover, the definition of Contribution was not moved to section 1.19, until subsequent drafts exchanged later in the evening of June 7. (Exs. 282, 315 at 009, 313 at 009, 314 at 009.) The MOM Respondents' explanation for all of this is based on speculation, not evidence.

Even if the Contribution Agreement was authentic, it was invalid. Claimants argue it violated the Affiliate Transaction restrictions under the Operating Agreements. (Ex. 315 at 027.) Perhaps. The Mom Respondents contend the Affiliate Transaction restrictions do not apply because the June 7 Contribution Agreement predates the June 8 Operating Agreements. But again, on June 7: (a) the MOM JV Entities – who are putative parties to and beneficiaries of the Contribution Agreement - did not exist; (b) the Term Sheet was still in effect; and (c) the Contribution Agreement promise was not "cash equity" as required by the Term Sheet.

All told, the Contribution Agreement did not satisfy the initial contribution obligation.

To the extent the MOM Respondents downplay the materiality of the initial contribution to Honarkar and his decision to enter into the JV, their position is untenable. At the outset, it was intended to immediately pay off the \$17.5 million debt to Honarkar's ex-wife and then fund the Hotel Laguna Project. When Continuum was unable to secure enough financing to pay off LoanCore, the initial contribution was also to be used to "close the gap" in the refinance. As the MOM Respondents recognized: "The cash needs of the contributed businesses were staggering at the outset of the joint venture, particularly given the financial troubles faced by Honarkar through his divorce, the subsequent foreclosure action brought by DIG, and the multiple receivers imposed over Honarkar's assets." (MOM Respondents' Opposition brief at 36.)

For these reasons, Claimants proved the first element of their fraud claim.

2. Intent Not to Perform

Claimants argue the MOM Respondents never intended to make the initial contribution from their own pockets, but instead planned to saddle the MOM JV Entities with debt in order to fund the initial contribution obligation. Again, "[a] promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Engalla, supra*, 15 Cal. 4th at 973.) And parol evidence is admissible to establish fraud. (Code Civ. Proc. ("CCP") § 1856(g).)

The evidence surrounding the JV negotiations is particularly instructive on this issue. While negotiating the Term Sheet, the drafts proposed by Continuum defined the form of the initial contribution as “debt with equity warrants and/or equity,” whereas Honarkar’s team repeatedly struck any reference to debt and inserted the term “cash.” (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17.) Obviously, Honarkar had no intention of allowing the MOM Respondents to saddle the JV Entities with debt to help fund the initial contribution. Eventually, the parties settled on the term “cash equity,” suggesting the MOM Respondents intended to mollify Honarkar by including the word “cash” but intending to use the Nano Loan proceeds anyway.¹⁵

That the Nano Loan closed and the proceeds were taken by Continuum the day before the Operating Agreements were finalized and executed, also suggests the MOM Respondents fully understood their promise to provide the initial contribution was false when made. Even more telling, on May 20, 2021, four days before the Term Sheet was signed and two weeks before the Operating Agreements were signed, Shyam signed the Nano Loan LOI, with the then-theoretical MOM JV Entities as the borrowers and Claimants’ assets as the collateral. (Ex. 130.) According to Kluchin, this loan idea was always Continuum’s plan. (6.27 Tr. at 850:17-852.11.)

These facts prove the MOM Respondents had no intention of providing the initial capital contribution without borrowing \$20 million of it from Nano using Claimants’ assets.

3. Intent to Deceive and Induce Reliance

Claimants argue the MOM Respondents’ intent to deceive Honarkar as to the form of the contribution is evidenced by their active concealment of the Nano Loan. “A fraudulent state of mind includes not only knowledge of falsity of the misrepresentation but also an intent to induce reliance on it.” (*Engalla, supra*, 15 Cal. 4th at 976.)

When the Nano Loan funded on June 7, 2021, Continuum requested that the proceeds be sent directly to a Continuum bank account at Nano “until the escrow company indicates that they will be ready to receive funds.” (Exs. 237, 240.) Because it was unusual to transfer the loan proceeds to any entity other than the borrower, Nano employee Brian Buchanan drafted a memorandum requesting permission from the Nano Loan Committee, which stated Gressak had “spoken with the Borrower and [] approved the funding of the account.” (Ex. 240.) And when the escrow closed on June 8, 2021, the escrow closing statement showed two transfers from Continuum – one for \$10 million and one for \$20 million. (Ex. 308.)

¹⁵ The MOM Respondents fail to explain how “cash equity” differs from “cash” or how a debt could be considered a “contribution.” (See, 6.26 Tr. at 806:5-7 [Kluchin cash equity “wouldn’t be a loan that has to convert to equity”].) And in the financial and real estate industries, the term “cash equity” is commonly used to describe the portion of an investment that can be easily converted into cash. See, <https://www.investopedia.com/terms/c/cash-equity.asp>.

The MOM Respondents offer two explanations for these unusual transfers. First, they argue there were concerns the escrow would be delayed if the money came from the MOM JV Entities as borrowers on the Nano Loan, because the MOM JV Entities were not parties to the LoanCore payoff in the escrow holder's files (a problem created by the MOM Respondents in the first instance). Second, they posit the Nano Loan proceeds were initially transferred to Continuum because they were being submitted as the MOM Members' contribution and, as such, should be received through the MOM Members' agent, Continuum.

But these explanations are not consistent with the reason provided to Nano at the time the Nano Loan funded – that the escrow holder was not ready to receive the funds. (Ex. 240.) Nor are they consistent with Kluchin's testimony that the funds were transferred to a Continuum bank account because the MOM JV Entities did not have their own bank accounts set up. (6.27 Tr. at 868:15-871:4.) Regardless of the actual reason for Continuum's receipt of the Nano Loan proceeds, the escrow statement offered no further explanation. It certainly did not disclose that the \$20 million deposit was from the proceeds of the Nano Loan to the MOM JV Entities. And there is no evidence that Respondents conveyed any of these reasons to Honarkar or his team.

Aside from Nano, three other lenders participated in the LoanCore refinance – First Choice Bank, Lone Oak, and Preferred Bank. (Exs. 220-222.) On June 4, 2021, just days before the close of escrow, Kluchin sent copies of the loan documents for each of those three lenders to Honarkar and Taxman. (*Id.*) He did not send over copies of the loan documents for the Nano Loan, despite admitting he had them available. (6.27 Tr. at 886:5-889:12.) Kluchin also sent an email chain on June 6, 2021 to Honarkar and the escrow company, indicating there were only three lenders involved in the refinance. (Ex. 229 at 2.) Neither the body of the email nor the attachment mentions the Nano Loan. (Ex. 229.) And, when Honarkar requested a list of all outstanding loans on the MOM JV Entities' assets in December 2021, the MOM Respondents sent a list from which the Nano Loan was conspicuously absent.¹⁶ (Ex. 716 at 3, ¶ 8; 22-24.)

Nano did not record the Nano Loan deeds of trust encumbering the MOM JV Entities' properties until March 2022. (Exs. 234, 235, 236.) The recording was initiated by Marc Cohen, acting as counsel for Nano, on January 18, 2022 (Ex. 515), the same day Nano received an Order to Cease and Desist from the Federal Deposit Insurance Corporation.¹⁷ (Ex. 514.) Thus, the weight of the evidence suggests the MOM Respondents were hiding and intentionally omitting information about the Nano Loan in their communications with Honarkar.

¹⁶ This list also did not include the \$1 million Tesoro Loan from Nano to Tesoro Redlands in July 2021.

¹⁷ The order required Nano to engage an independent third party to review extensions of credit to insiders, remediate extensions made "on preferential terms or presenting more than the normal risk of repayment or other unfavorable features," and submit new procedures to "strengthen the Bank's internal controls related to financial transactions between the Bank and senior executives, directors, and/or any entities which they control." (Ex. 514, ¶¶ 5-8.)

Still, the MOM Respondents insist Honarkar and his team were aware of the Nano Loan based on a flurry of due diligence emails from Nano during the JV negotiations, as well as oral communications with Honarkar. As to the Nano emails, context matters. During the JV negotiations, on May 19, 2021, Nano provided Honarkar with the LOI for the \$150 million loan from Nano and other “participant banks.” (Ex. 106.) The next day, on May 20, Nano provided Shyam with the \$20 million Nano Loan LOI. (Ex. 130.) Remarkably, both LOI’s list the same Honarkar and 4G properties and subsidiary LLCs as collateral. (Exs. 106 at 1-2; 130 at 2.)

It is not surprising then that Honarkar and his team were receiving emails from Nano seeking due diligence on these properties. (Exs. 115 [May 19 email from Buchanan re underwriting]; 4017 [May 20 emails from Nano employee re certificates of insurance]; 4018-4020 [May 20 response emails from Honarkar’s team attaching requested documents]; 5517 [May 21 email, 4G employee requesting insurance certificates – “[w]e still have the current lender, that has not changed, the bank we are refinancing the loan portfolio with is Nano Banc (who might be syndicating the loan with other lenders). They need the current certificates no matter the lender”]; 5518; 2296.) But none of these emails referenced the Nano Loan or clarified that Nano was underwriting the Nano Loan.¹⁸ It is reasonable to believe Honarkar and his team assumed Nano was seeking documents for underwriting the \$150 million loan or another outstanding Honarkar loan previously obtained from Nano (Ex. 123.) More importantly, Honarkar’s reaction to discovering one of the recorded Nano Loan trust deeds in 2023 is consistent with his claimed lack of knowledge of the Nano Loan before then. (Exs. 656, 659.)

As for oral communications, again, no credible evidence was presented that the Nano Loan was disclosed to Honarkar during the CdM Meeting, the Montage Meeting, or the June 6 meeting at Honarkar’s house. Rather, the weight of the evidence proves otherwise.

Respondents point to a perceived discrepancy in Honarkar’s testimony, suggesting he was aware \$143 million in secured loans refinanced the LoanCore Loan. (6.25 Tr. at 351:9-14; Ex. 2637 at 2; Ex. 2582 (“144M payout of DiG [for LoanCore Loan refinance] with \$143M of Loan”); Ex. 3934.) Respondents argue this proves Honarkar was aware of the Nano Loan, because \$143 million was the total amount of loans including the \$20 million Nano Loan. This argument is not persuasive. Again, the evidence shows Honarkar was not aware the \$20 million Nano Loan had been obtained in the name of the MOM JV Entities, much less that it had been used to fund the MOM Members’ initial Contribution. Plus, Honarkar’s testimony is consistent with Nano and the other participating banks performing under the \$150 million Nano LOI.

¹⁸ Though Respondents rely heavily on Buchanan’s testimony that Honarkar was fully informed of the Nano Loan, the Arbitrator points out Buchanan was in fact unaware of the \$150 million Nano LOI, despite his signature being on the document. (Ex. 106; 6.26 Tr. at 566:13-567:25.) There were also other LOIs from Nano to Honarkar of which Buchanan was unaware. (6.26 Tr. at 563:11-566:12; 569:22-571:7, 575:19-577:11, 584:20-585:13; 6.28 Tr. at 1118:17-1119:5.) It is likely Buchanan and Honarkar were both focusing on different Nano loans when discussing due diligence, as it seems neither knew the Nano Loan existed.

Moreover, Honarkar had several other Nano loans, in addition to the LoanCore refinance loans, which could explain his conclusion there was a total of \$143 million in loans. (Exs. 29 [Nano credit memo showing prior debts], 5501 [demonstrative]; 6.25 Tr. at 358:7-361:11.)

The MOM Respondents were aware of Honarkar's position that the initial contribution should not be provided in the form of a debt. As explained above, the Nano Loan transaction itself did not satisfy the initial contribution obligation. Yet, the MOM Respondents obtained the Nano Loan, muddled the waters, omitted basic information from their communications with Honarkar that would have informed him of the Nano Loan and, given the timing, conflated due diligence on the \$20 million Nano Loan with the \$150 million Nano LOI and other Nano loans.

If, as the MOM Respondents insist, they informed Honarkar of the Nano Loan and the MOM Members' promise to repay it, they provided no explanation for omitting the form of the initial contribution in their written communications with Honarkar. The evidence supports a finding the MOM Respondents intended to deceive Honarkar with respect to the Nano Loan.

4. Actual and Reasonable Reliance

Claimants must prove both actual and justifiable reliance or reasonable reliance. (*Beckwith v. Dahl* (2012) 205 Cal. App. 4th 1039, 1062-67.) "Actual reliance occurs when a misrepresentation is an immediate cause of a plaintiff's conduct, which alters his legal relations, and when, absent such representation, he would not, in all reasonable probability, have entered into the contract or other transaction." (*Engalla, supra*, 15 Cal. 4th at 976.) "It is not necessary that a plaintiff's reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct. It is enough that the representation has played a substantial part, and so has been a substantial factor in influencing his decision." (*Id.* at 976-77; *Whiteley v. Philip Morris Inc.* (2004) 117 Cal. App. 4th 635, 678 (same).) "Moreover, a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. A misrepresentation is judged to be material if a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." (*Engalla, supra*, 15 Cal. 4th at 977.)

Unquestionably, the \$30 million initial contribution was material to Honarkar and his decision to enter into the JV, given his immediate needs for funds. And the evidence is certain Honarkar would not have agreed the initial contribution could be in the form of debt secured by the JV properties. (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17; 6.24 Tr. at 150:24-151:7 ["That defeats the purpose. You're not putting money, you know; how could you be a partner?"]). The exclusivity provision in the Term Sheet also limited Honarkar's ability to pursue other options for financing prior to establishing the JV. (Ex. 148 at 8-9.)

So, the evidence shows the representations the MOM Respondents made about their initial contribution substantially influenced Honarkar's decision to enter into the JV and sign the Operating Agreements. (*Hoffman v. 162 N. Wolfe LLC* (2014) 228 Cal. App. 4th 1178, 1193-94 ["Reliance can be proved in a fraudulent omission case by establishing that had the omitted information been disclosed, the plaintiff would have been aware of it and behaved differently"].)

Honarkar must also show his "actual reliance on the representation was justifiable, so that the cause of the damage was the defendant's wrong and not the plaintiff's fault." (*Beckwith*, 205 Cal. App. 4th at 1066.) Justifiable reliance accounts for the particular "circumstances" of the plaintiff. (*Whiteley, supra*, 117 Cal. App. 4th at 684 [weighing, *inter alia*, plaintiff's "lack of sophistication" and "the evidence that she was addicted to cigarettes" in determining whether her reliance on statements about effects of cigarette use was reasonable or justified].)

The MOM Respondents argue Honarkar could not have justifiably relied on their representations because he failed to read the final Operating Agreements before execution. However, whether a plaintiff "read the entire [contract] is not dispositive" of reliance where there is "ample evidence of fraud." (*Orozco v. WPV San Jose, LLC* (2019) 36 Cal. App. 5th 375, 392.) Given the chaos surrounding the negotiation and due diligence processes and the frantic push to get the documents finalized, Honarkar was not provided "reasonable opportunity to know of the character or essential terms of the proposed contract[s]." (*Rosenthal v. Great W. Fin. Sec. Corp.* (1996) 14 Cal. 4th 394, 423; 6.25 Tr. at 336:14-25 ["every five minutes, there was a new version. As soon as you get one, then it kicks in another version"].) He relied on his counsel to assist him with the documents. (6.24 Tr. at 132:1-133:2; 6.25 Tr. at 337:1-19, 322:5-25.) And again, Kluchin pressured Honarkar to sign early, before the Operating Agreements were finalized. (Ex. 288 ["We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap"]; Exs. 347, 352.)

Based on the financial wherewithal and resources available to the MOM Respondents, specifically Makhijani and Continuum, it was reasonable for Honarkar to assume Continuum's investors could and would follow through on their promises to fund the initial contribution. Honarkar was introduced to Makhijani by Gressak at Nano, a bank with which Honarkar already had an existing relationship and a "friend" in Gressak he trusted. (6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) It is also important that many of the Continuum investors were also Nano shareholders and they had access to significant capital. (Ex. 1000 at 181:18-190:12.)

And finally, given the MOM Respondents' intentional concealment of the Nano Loan, there was little Honarkar could have done to discover the initial contribution obligation was going to be made by encumbering the MOM JV Entities assets with debt. (*Whiteley, supra*, 117 Cal. App. 4th at 684 ["Negligence on the part of the plaintiff in failing to discover the falsity of a statement is no defense when the misrepresentation was intentional rather than negligent"].)

Based on the evidence in the record, the Arbitrator finds Claimants actually and justifiably relied on the MOM Respondents' representations.

5. Nonperformance

As discussed (§ III.A.1. above), the MOM Respondents failed to provide the \$30 million capital contribution as required. In addition, the MOM Respondents claimed the monthly payments on the Nano Loan as expenses of MOM JV Entities on at least two occasions (Exs. 574, 604; Exs. 2909, 5500 [Chi Lu, 4G's Controller, questioning payments to Nano]; 6.27 Tr. at 903:18-20, 904:1-4; 7.1 Tr. 1491:7-1492:3.) The MOM Respondents contend these payment entries were made in error and subsequently reversed. (Exs. 2909, 3625.) The Arbitrator rejects these contentions as not supported by the evidence. The MOM Respondents also insist the MOM Members alone have made all the payments on the Nano Loan. (Ex. 5530 at 2; Exs. 3410, 1042.) But the evidence supporting this position is of limited value since, as of July 2022, the MOM Respondents had recorded the Nano Loan on the JV's books and records as a long-term liability of the MOM JV Entities, and have provided no books and records since. (Ex. 507.) The fact remains - the MOM Respondents did not perform the promised capital contribution.

6. Resulting Damage and Alternative Remedies

"To recover for fraud, a plaintiff must prove loss proximately caused by the defendant's tortious conduct." (*Fladeboe v. Am. Isuzu Motors Inc.* (2007) 150 Cal. App. 4th 42, 65.) The MOM Respondents contend Claimants have suffered no cognizable damages, as no MOM JV Entity funds were used to pay the Nano Loan. But again, the evidence shows: (1) the MOM Respondents' misrepresentations in connection with their initial contribution played a substantial part in inducing Honarkar to enter into the JV and (2) the MOM Respondents then encumbered Claimants' properties with the \$20 million Nano Loan, along with hundreds of millions of dollars of additional encumbrances over the course of the JV. (Ex. 967.) These findings alone satisfy Claimants' initial burden to prove the fact that they were damaged by the MOM Respondents' conduct. (See also Exs. 1006 and 1509 [Spindler Reports].) Claimants are not required to prove the specific amount of their damages to perfect this claim, particularly since it would be impossible to quantify them without an accounting of the MOM JV Entities' finances.

For these reasons, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed (§ III.K. below); or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet. (*Chapman v. Skype Inc.* (2013) 220 Cal. App. 4th 217, 234 ["A party alleging that she was fraudulently induced to enter into a contract may either rescind the contract, offer to restore any benefits received, and seek restitution or retain the benefits of the contract and seek damages for fraud"]); Civ. Code § 1692.)

B. Claimants’ Direct Breach of Contract Claims Against the MOM Members and the MOM Managers (FAC at 24-25)

Claimants allege the MOM Parties breached the Operating Agreements and the Management Agreement. (Exs. 313-315, 37.) Each will be discussed in turn.

1. Applicable Law and Elements of Contract Claims

Again, Delaware law applies to the claims for breach of the Operating Agreements (Exs. 313-315, § 19.1.), and California law applies to the claim for breach of the Management Agreement. (Ex. 37, § 13.4.) The elements of a breach of contract claim under Delaware law are substantially similar to those under California law. (Compare *Humanigen, Inc. v. Savant Neglected Diseases, LLC* (Del. Super. Ct. 2020) 238 A.3d 194, 202 with *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal. App. 4th 221, 228.)

2. Breach of Operating Agreements – Failure to Provide Initial Contribution

Claimants assert the MOM Parties breached the Operating Agreements by failing to provide the initial contribution. (Ex. 315, § 6.1.) The Arbitrator agrees for the reasons discussed at length in connection with the fraudulent inducement claim above (§ III.A.1.), and therefore finds Claimants proved this breach of contract claim.¹⁹ The Arbitrator further finds this breach was material and it resulted in a failure of consideration. (*Level 4 Yoga, LLC v. CorePower Yoga, LLC*, C.A. No. 2020-0249-JRS, 2022 WL 601862, at *27 (Del. Ch. Mar. 1, 2022) [under Delaware law, “a breach is material if it goes to the root or essence of the agreement between the parties, or touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract”]; *Alchemy LTD LLC v. Fanchise League Co.*, C.A. No. 2021-0476-LWW, 2023 WL 4670954, at *5 (Del. Ch. July 20, 2023) [“Failure of consideration occurs when the bargained-for consideration is not rendered by one of the parties”].)

Hence, as a separate and sufficient basis apart from fraud, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed; or (b) rescission of the Operating Agreements and the Other JV Related Agreements. (*United Engineers & Constructors, Inc. v. Babcock & Wilcox Co.*, C.A. No. 12540, 1993 WL 50309, at *3 (Del. Ch. Feb. 11, 1993) [“The courts of this State, of course, can grant rescission for a number of reasons, e.g., ... failure of consideration”].)

¹⁹ The MOM Respondents’ arguments to the contrary based upon the Release Agreement fail because: (i) by its own terms it does not apply to “claims for breach of any operating agreement...” (Ex. 317 at § 1(a)); and (ii) “[a] release obtained through fraud is invalid.” (*Butler Am., LLC v. Aviation Assurance Co.* (2020) 55 Cal. App. 5th 136, 144.)

3. Breach of Operating Agreements – Unauthorized TIC Sale in Property Owned by Laguna HI, LLC

Claimants assert the MOM Parties breached the Operating Agreements by causing Subsidiaries/Other Owned LLCs to engage in transactions, including the sale of TIC interests, without Honarkar’s knowledge or consent. (Exs. 313-315, § 9.3(b) [“Managing Member shall not be entitled to sell the ownership interests in an Other Owned LLC or the asset owned by an Other Owned LLC without the prior written consent of MH...”].) Again, the Arbitrator agrees.

In December 2022, the MOM Managers sold for \$4.1 million a TIC interest in property owned by Laguna HI, LLC, a Subsidiary/Other Owned LLC owned by the MOM JV Entities. (Exs. 315 at 43; 632, 634, 645, 647.) Honarkar was not informed or aware of the transaction. (6.24 Tr. at 180:11-22, 254:12-19; 7.8 Tr. at 2539:20-2540:9.)

The MOM Parties do not dispute the application of Section 9.3 or claim Honarkar was aware of this TIC sale. Instead, they argue Laguna HI, LLC became a “Project” through the First Amendment to the Operating Agreements (the “First Amendment”) on June 30, 2021, such that Honarkar’s consent was unnecessary to sell the TIC interest. (Ex. 689 at 72, § 1(a).) Not so.

The Operating Agreements required the MOM Members to provide notice, make a Contribution, and agree on a development budget, in order to convert a Subsidiary/Other Owned LLC from a “Potential Project” to a “Project.” (Ex. 315, § 6.1(d).) Moreover, while the First Amendment allowed the MOM Members to designate Potential Projects as Projects without further action by the MOM Managers or Members, *i.e.*, without Honarkar’s knowledge or consent, it did not change or remove the notice and contribution requirements of section 6.1(d). (Ex. 689 at 72, § 1(a); Ex. 591 [Sep. 2022 Taxman email, noting there have been no notices or contributions to convert assets to Projects under amended agreements].)

In this way, the Operating Agreements still obligated the MOM Members to seek Honarkar’s consent to recharacterize the asset. (Ex. 315, § 6.1(d).) Interpreting the interplay between the Operating Agreements and the First Amendment in any other way would negate the negotiated balance of power between the parties and lead to an absurd result, allowing the MOM Members to designate all properties as Projects as soon as the First Amendment was signed.

Further, there is no evidence, other than Makhijani’s uncorroborated, self-serving testimony, that the proceeds from the sale of this TIC interest in the MOM JV Entities’ assets were transferred to the MOM JV Entities or distributed to the MOM Members and MO Members as required by the waterfall provisions in the Operating Agreements. (Exs. 313-315, § 8.) Accordingly, the Arbitrator finds the MOM Parties breached the Operating Agreements by selling the TIC interest and that breach resulted in monetary damages to Claimants.

4. Breach of Operating Agreements – Unauthorized Insider/Self-Interested “Affiliate” Transactions With Cantor

Claimants assert the MOM Parties breached the Operating Agreements by entering into “contribution agreements” with the Cantor Group and its related entities (“Cantor”), all of which are affiliates of Shyam. Claimants contend the MOM JV Entities’ assets are heavily encumbered with debt obligations, in part because of loans from Cantor, and they therefore have limited ability to obtain additional financing or liquidity.

The Operating Agreements plainly prohibit, without Honarkar’s prior written approval, “Affiliate” transactions by the MOM Parties; that is, transactions between the MOM JV Entities and the MOM Managers or the MOM Members and entities controlled by or under common control of the Managing Managers or MOM Members. (Exs. 313-315, §§ 9.15, 1.3, 1.17, 1.20.) Cantor is surely an “Affiliate” of the MOM Managers or MOM Members. Cantor consists solely of Shyam; it has no employees and shares the Continuum offices. (7.12 Tr. at 3642:25-3643:8.) Shyam is the founder, CEO, and owner of Continuum and the Managing Member of MOM CA Manager (as well as part of the investor group as a MOM Member). (7.12 Tr. at 3640:17-3641:8.) Kluchin also admitted Cantor was Continuum’s “affiliate” and testified he had explained that to Honarkar. (6.27 Tr. at 1086:4-19; 7.1 Tr. at 1567:24-1570:3.)

The evidence shows the MOM Parties caused the MOM JV Entities and some of the subsidiary LLCs to enter into “contribution agreements” regarding loans from Cantor Group IV LLC and Cantor Group V LLC, both Cantor affiliates. (Ex. 967 at 16-17; 6.27 Tr. at 1009:18-1010:7 [Kluchin testified all Cantor loans have an associated contribution agreement].) Shyam signed these contribution agreements as both the “borrower” and “lender.” (6.27 Tr. at 1002:4-1005:18.) They permit the conversion of the loans made by Cantor into equity in the MOM JV Entities at the option of the MOM Members, if the MOM JV Entities that borrowed the money perform well. (Ex. 469, § 4 [contribution provision].) But, if the MOM JV Entities do not perform well, then the MOM Parties can maintain the transaction as a loan, and require the MOM JV Entities to repay Cantor in full, with interest.²⁰ However, there is no evidence the MOM Respondents ever received written consent from Honarkar, or even informed him of the existence of these loans from the Cantor affiliated entities. (6.27 Tr. at 1008:2-1009:3 [Kluchin – “Q:...[Y]ou did not seek written consent from Mr. Honarkar for the contribution agreements associated with those loans before they were entered, correct? A: Not that I recall”].)

For these reasons, the Arbitrator finds the MOM Parties breached the Operating Agreements by entering into unauthorized Affiliate transactions with Cantor; that breach resulted in monetary damages to Claimants, the amount of which will be determined after the accounting discussed below is completed; and the contribution agreements are likely invalid.

²⁰ The Arbitrator notes this is a peculiar “heads I win, tails you lose” structure.

5. Breach of Operating Agreements – Failure to Keep and Provide Books and Records for the MOM JV Entities

Claimants assert the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required by section 12.1 which states: “Books of Account. The Managing Manager shall, at the [MOM JV Entities’] sole cost and expense, keep separate, full and accurate books and records of the [MOM JV Entities] wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the [MOM JV Entities] and a list of the names and addresses of the Members.... The Administrative Manager [Honarkar] or a Member [including the MO Member] shall have the right at any time to inspect the [MOM JV Entities] books and records..” (Exs. 313-315, § 12.1.) Claimants contend they have been damaged as a result of these breaches, because they were forced to spend time and resources on needless litigation attempting to obtain these records.

This claim has merit. Both Honarkar and Niazi testified they repeatedly sought financial information from the MOM Respondents and never received it. (6.24 Tr. at 157:22-162:14; 7.8 Tr. at 2525:1-2526:4; Ex. 5480 [MOM Respondents willing to provide financial documents only if Honarkar submits “letter withdrawing inspection demands”].) The MOM Parties admitted they only kept records for the MOM JV Entities for certain periods of time, despite evidence that transactions occurred outside of these time periods. (Exs. 1385 at 3; 967 [loan on 11.15.23].) Certainly, it is unclear where and how records of transactions between the MOM JV Entities and MOM Members were maintained, if at all, particularly since Kluchin testified he had “no information” on why QuickBooks data was not maintained for the MOM JV Entities during certain time periods. (6.27 Tr. at 975:21-981:5.) Finally, the spreadsheet submitted by the MOM Respondents carries minimal weight on this record. (Ex. 3625 [fails to track income into the JV or funds transferred out to Continuum, Makhijani, or other investors].)

For these reasons, though the resulting damages may be nominal, the Arbitrator finds the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required. (*In re P3 Health Grp. Holdings, LLC* (Del. Ch. Oct. 31, 2022) Consol. C.A. No. 2021-0518-JTL, 2022 WL 16548567, at *9 [“A court also can vindicate a breach of contract through an award of nominal damages”].)

6. Breach of Management Agreement – Failure to Pay Management Fee

Claimants assert the MOM Parties breached the separate Management Agreement between Honarkar and 4G, under which Honarkar was supposed to be paid monthly management fees for management services provided to Hotel Laguna, the Holiday Inn Laguna Beach, and several Laguna Beach vacation rental properties. (Ex. 37.) Claimants insist the Management Agreement remains valid because it predates the Operating Agreements.

The Management Agreement claim was not specifically alleged in the FAC and the evidence offered to support it was nominal at best. There is simply not enough in the record to determine the parties' rights, duties, and obligations at issue. Consequently, the Arbitrator finds Claimants have failed to prove the MOM Parties breached the Management Agreement.

C. Claimants' Direct Forcible Entry and Forcible Detainer Claims Against Makhijani, Continuum, and the MOM Parties (FAC at 31-33)

Claimants assert the MOM Respondents violated California's forcible entry and forcible detainer laws by breaking into and seizing the 4G offices. To establish this claim, "the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer." (CCP § 1172.) The law explicitly prohibits entry "into any real property" "[b]y breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror." (CCP § 1159.) Similarly, the law prohibits "[b]y force, or by menaces and threats of violence, unlawfully hold[ing] or keep[ing] the possession of any real property, whether the same was acquired peaceably or otherwise." (CCP § 1160.)

On July 24, 2023, while Honarkar and Respondents were in court on this matter, Kluchin, Haddad, and Miller, along with a number of other individuals, broke into the 4G offices at 775 Laguna Canyon Road as 4G employees were working. (Ex. 773.) A glass door was shattered with a hammer and the doors at the front entrance were forced open. (*Id.* at 4.) Property was removed from the 4G offices.

While the MOM Respondents do not dispute these facts, they contend no forcible entry or detainer occurred, because they were joint owners of 4G. But the evidence shows 4G was not a Contributed Entity. (Exs. 583, 1354; 7.3 Tr. at 1915:7-1919:6.) Regardless, the MOM Respondents' actions bear all the hallmarks of improper self-help under California law.

A party's "title or right of possession is no defense;" possession is irrelevant to the determination of forcible entry. (*Daluiso v. Boone* (1969) 71 Cal. 2d 484, 486.) An unlawful detainer action is the only legal way to obtain possession of real property. (*Glass v. Najafi* (2000) 78 Cal. App. 4th 45, 48-49 [forcible detainer and entry statutes "reflect a policy, with deep roots in English law, barring the use of forceful self-help to enforce a right to possession of real property and requiring instead the use of judicial process to gain possession"]; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1038 [landlords may enforce rights "only by judicial process, not by self-help"]; *Jordan v. Talbot* (1961) 55 Cal. 2d 597, 608 [forcible detainer found where forcible entry was followed by "removal of plaintiff's furniture and [defendant's] admonishment to 'Get the hell out of here.'"]; CCP § 1160.)

Accordingly, the Arbitrator finds the MOM Respondents violated both the forcible entry and forcible detainer statutes. Claimants are thus entitled to the restitution of the 4G offices and any property removed, plus incidental damages. (*Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219 [“The plaintiff’s interest in peaceable even if wrongful possession is secured against forcible intrusion by conferring on him the right to restitution of the premises, the primary remedy, and incidentally awarding damages proximately caused by the forcible entry”].)

D. Claimants’ Derivative Conversion Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 28-29)

Claimants assert the MOM Respondents are liable to the MOM JV Entities for conversion of the MOM JV Entities’ assets (e.g., loan and sale proceeds) in six separate instances. Specifically, Claimants claim conversion of (1) \$20 million in Nano Loan proceeds, (2) \$1 million in Tesoro Loan proceeds, (3) \$5.1 million in proceeds from the sale of TIC interests, (4) \$11.6 million in Tesoro Redlands Preferred Bank loan proceeds, (5) excessive distributions the MOM Parties made to themselves, and (6) deeds of trust on properties at issue in the potential \$175 million loan from Coastline Loans, LLC (“Coastline Loan”) in June 2021.

California law provides, “Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” (*Lee v. Hanley* (2015) 61 Cal. 4th 1225, 1240.) It may be claimed for personal property and sums of money. (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal. App. 4th 384, 396.)

“It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use.” (*Plummer v. Day/Eisenberg LLP* (2010) 184 Cal. App. 4th 38, 50.) Conversion is a strict liability tort and “requires only that the defendant have intentionally done the act depriving the plaintiff of his or her rightful possession.” (*Voris v. Lampert* (2019) 7 Cal. 5th 1141, 1158.)

“If a defendant is authorized to make a specific use of a plaintiff’s property, use in excess of that authorized may subject the defendant to liability for conversion, if such use seriously violates another’s right to control the use of the property.” (*Duke v. Superior Court* (2017) 18 Cal. App. 5th 490, 506.) And finally, “the plaintiff need show only that he was entitled to possession at the time of conversion; the fact that plaintiff regained possession of the converted property does not prevent him from suing for damages for conversion.” (*Enter. Leasing Corp. v. Shugart Corp.* (1991) 231 Cal. App. 3d 737, 748.)

The MOM Respondents argue Claimants cannot establish liability for conversion, because they have failed to prove the dollar amounts of the damages suffered. No such proof is required. To establish liability, Claimants need only prove injury, particularly where an accounting would be required to ascertain the full scope of damages. (*Lueter v. State* (2002) 94 Cal. App. 4th 1285, 1302-03 [in distinguishing between “injury” and “damages,” court found “[t]o recover in tort, the plaintiff must prove the fact of proximately caused injury with reasonable certainty,” where damages are “the monetary sum...awarded as compensation for the injury”].) To the extent the MOM Respondents insist their “infusion” of funds to the MOM JV Entities negates their liability for conversion, the Arbitrator notes there was no reliable evidence presented to support this assertion, outside of the MOM Respondents’ self-serving testimony. These infusions will be addressed as offsets in the accounting of the MOM JV Entities’ finances.

As to the \$20 million Nano Loan, the proceeds were transferred to Continuum, rather than to the MOM JV Entities, the borrowers who had the right to possess those proceeds. (Exs. 239, 308.) That those proceeds appear to have been used to help pay off the LoanCore Loan or that the MOM JV Entities may have gotten a portion of those proceeds later is irrelevant to the conversion claim. The Arbitrator finds proof of conversion of those proceeds.

As to the \$1 million Tesoro Loan, the proceeds borrowed from Nano did not go to the borrower, Tesoro Redlands, or even to the MOM JV Entities; instead, they went to Enrico Arvielo, an investor in one of the MOM Members, who had demanded his investment back. (Exs. 411, 405, 409; 6.27 Tr. at 953:17-957:3.) Because Tesoro Redlands was an asset of an Other Owned LLC/Subsidiary of the MOM JV Entities, the MOM JV Entities had the right to possess those loan proceeds. The Arbitrator finds proof of conversion of those proceeds.

As to the sale of TIC interests, Claimants take issue with the \$1 million TIC interest in Hotel Laguna, LLC sold to Jaachak and a \$4.1 million TIC interest in property owned by Laguna HI, LLC,²¹ both of which are subsidiaries of the MOM CA JV. The MOM JV Entities did not receive distributions or proceeds from these sales, as the funds from both TIC sales were immediately utilized to purchase membership interests in the MOM CA Member. (6.27 Tr. at 990:18-996:19; 7.2 Tr. at 1765:13-1767:20.) The MOM CA JV, as the seller of those TIC interests, certainly had the right to possess those TIC sale proceeds. In addition, those TIC sales potentially exposed the MOM CA JV to federal tax liability. (Ex. 709, ¶ 15 [Makhijani declaration, stating these TIC sales were “made solely for purposes of making accommodations to the various investors, so they could take advantage of 1031 exchanges and tax benefits...[i]t was always intended that these transfers would be temporary”].) Hence, the Arbitrator finds proof of conversion of those proceeds.

²¹ The Arbitrator has found the \$4.1 million TIC sale was an unauthorized transaction under the Operating Agreements and was not converted into a “Project” the MOM Respondents could sell without Honarkar’s written consent, all for the reasons previously discussed in Section III.B.3. above.

As to the \$11.6 million in Tesoro Redlands Preferred Bank refinance loan proceeds, at least \$8.8 million went directly to a Continuum bank account from the Tesoro Redlands bank account on March 1, 2022. (Exs. 541.) An additional \$2.8 million held back in escrow went into the Continuum bank account four months later. (Ex. 2894; 7.2 Tr. at 1528:5-1531:19.) Thus, the evidence shows a significant portion of the proceeds from the refinance ultimately went to Continuum, rather than to the MOM JV Entity which had the right to possess those proceeds. The Arbitrator finds proof of conversion of at least a portion of those proceeds.

As to distributions made by the MOM Parties to themselves, Claimants rely on the Operating Agreements to argue the MOM Parties are entitled to a priority return based only on their actual Contribution. (Exs. 313-315, §§ 9.4, 8 [waterfall provision dictating ratio of distributions].) According to Claimants, the MOM Respondents made priority distributions to themselves based on a \$10 million Contribution, although they only contributed \$6.1 million. (Ex. 308 [“Remainder of Deposit to Continuum” at \$3.9 million]; Ex. 1509 [Respondents’ damages schedules]; 7.9 Tr. at 3021:25-3023:7, 3034:14-3035:12; 7.11 Tr. at 3430:7-3432:19.) The Arbitrator finds proof of conversion of at least some portion of these distributions.

As to the Coastline Loan deeds of trust, the MOM Parties executed those instruments on behalf of the subsidiary LLCs and thus encumbered assets of the MOM JV Entities. (Ex. 310.) Coastline is owned and controlled by Andrew Stupin, one of Nano’s founding shareholders and a repeat Makhijani investor, who also gave his initials to MOM AS JV. (6.27 Tr. at 964:12-14.) Though no proceeds from this loan were ever paid to the JV, many of the deeds of trust are still outstanding.²² (*Id.* at 964:15-966:15.) Therefore, the Arbitrator finds proof of conversion of those assets based on the encumbrances placed on them to secure the unfunded Coastline Loan.

The amount of the MOM Respondents’ conversions will be revealed by the accounting.

E. Claimants’ Derivative Penal Code Section 496 Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 30-31)

Claimants argue the acts of conversion also violated Section 496, which provides, “[e]very person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained.”

²² The MOM Respondents argue “pending litigation” prevented the removal of the Coastline Loan deeds of trust but no evidence was presented to support this position. In fact, some but not all of the deeds of trust have been reconveyed. No explanation was offered as to why some could be reconveyed but not others.

The elements of a Section 496 claim are that “(i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property.” (*Switzer v. Wood* (2019) 35 Cal. App. 5th 116, 126.) Claims can be asserted against the “principal in the actual theft of the property.” (§ 496(a).) The language of Section 496 also “covers fraudulent diversion of partnership funds.” (*Siry Inv., L.P. v. Farkhondehpour* (2022) 13 Cal. 5th 333, 361.) However, unlike conversion, Section 496 requires criminal intent, where the “defendants acted not innocently or inadvertently, but with careful planning and deliberation.” (*Id.* at 362.)

The evidence supports a finding the MOM Respondents improperly utilized funds that should have been earmarked for the JV to benefit themselves; for example, the circumstances surrounding the Nano Loan, repayment of their investor Enrico Arvielo, and TIC sales to benefit the MOM Members. And they did so by actively concealing their actions from Claimants. (See § III.A. above.) (*Grouse River Outfitters, Ltd. v. Oracle Corp.* (9th Cir. 2021) 848 F. App’x 238, 242 [“because the district court held that Grouse River had adequately pleaded its fraud claims, it follows that Grouse River adequately pleaded [the elements of Section 496 claims]”].). Moreover, there was insufficient evidence that any of these funds were ever returned to the MOM JV Entities. Hence, the Arbitrator finds the MOM Respondents violated Section 496.

F. Claimants’ Derivative Unjust Enrichment Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 29-30)

Claimants assert an unjust enrichment claim, arguing the MOM Respondents have looted the MOM JV Entities, using them as personal slush funds and enriching themselves without any benefit to the JV, all while exposing the MOM JV Entities to substantial risk. To prove this claim, Claimants must show “receipt of a benefit and unjust retention of the benefit at the expense of another.” (*Lectrodryer v. Seoulbank* (2000) 77 Cal.App.4th 723, 726; *Pro. Tax Appeal v. Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal. App. 5th 230, 238.)

The Arbitrator finds the MOM Respondents are liable for unjust enrichment, for the reasons discussed in connection with the conversion and Section 496 claims discussed in Sections III.D. and E. above. But the full nature and extent to which the MOM Respondents unjustly enriched themselves cannot be determined without the accounting discussed below.

G. Personal Liability of Makhijani

Claimants argue Makhijani is personally liable for fraudulent inducement, forcible entry and detainer, conversion, violation of Section 496, and unjust enrichment, because an agent is always liable for his own torts; and he is an alter ego of Continuum and the MOM Parties.

The MOM Respondents concede Makhijani is their agent, and is liable for his own torts, but argue Claimants failed to prove fraudulent inducement by Makhijani (apart from the other MOM Respondents) and failed to prove he is the alter ego of Continuum or the MOM Parties.²³

The Arbitrator finds Claimants have proven Makhijani was personally involved in the fraudulent inducement and other non-contract claims discussed above. He directed and participated in the negotiation of the Term Sheet (7.2 at 1873:14-17), the Operating Agreements and the Other JV Related Agreements. (Exs. 2307, 2382, 319.) He admitted he “was personally involved” with the Term Sheet and other JV agreement negotiations. (Ex. 758 ¶ 5.) He even admitted he was “personally involved” in obtaining the Nano Loan. (Ex. 758 ¶¶ 10-11.) Makhijani was also personally involved in the conversion claims involving: the \$11.6 million in Tesoro Redlands Preferred Bank loan proceeds (Ex. 2836); the \$5.1 million in proceeds from the sale of TIC interests (Ex. 722 ¶ 21); the Cantor affiliate transactions (7.2 Tr. at 1660:3-1661:16); and the excessive distributions the MOM Parties made to themselves (7.3 Tr. at 2135:3 2137:20). Finally, other MOM Respondent agents testified Makhijani controls and manages the MOM JV Entities’ daily operations. (6.27 Tr. at 978:14-21.) Therefore, Makhijani is personally liable for the fraudulent inducement and other non-contract claims based on his own actions.²⁴

The Arbitrator finds Claimants have not proven Makhijani is the alter ego of Continuum or the MOM Parties. Alter ego is “an extreme remedy, sparingly used.” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal. App. 4th 523, 539.) It requires proof of two conditions: “First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.” (*Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155.)

The evidence shows Shyam, not Makhijani, is the owner of Continuum. (7.2 Tr. at 1650:5-14 [in the hierarchy of Continuum, Makhijani works under and reports to Shyam]; 7.11 Tr. at 3561:7-12, 3562:18-21, 3564:9-3565:5; *Hasso*, 227 Cal. App. 4th at 155.) And there would be no inequitable result if the acts in question were treated as those of Continuum or the MOM Entities, rather than as Makhijani’s acts. (*Ibid.*) That is, there is no evidence that either Continuum or the MOM Parties are “judgment proof,” such that they could not pay for any damages awarded to Claimants. (*Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 528 [adding alter ego manager and sister company to a judgment to avoid prejudice, when judgment debtors’ actions caused assets to disappear].) Therefore, Makhijani is not personally liable for the fraudulent inducement and other non-contract claims based on the alter ego theory.

²³ The MOM Respondents make no such argument relative to the other personal liability claims.

²⁴ The Arbitrator notes no claims for conspiracy or aiding and abetting were alleged against Makhijani (unlike Nano) in the FAC and none were argued in the closing briefs. So, the Arbitrator expresses no opinion on those theories.

H. Claimants' Conspiracy and Aiding/Abetting Fraudulent Inducement Claims Against Nano (FAC at 33-37)

Claimants argue Nano is liable for the fraudulent inducement/promissory fraud discussed above (§ III.A.), because Nano conspired with and aided and abetted the MOM Respondents.

Conspiracy is “a form of vicarious liability by which one defendant can be held liable for the acts of another,” where all have “agreed to a common design to commit a wrong” that damages a plaintiff. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal. App. 5th 630, 652.) Each member of a conspiracy must have “acted in concert” and come to “a mutual understanding to accomplish a common and unlawful plan,” wherein one or more of them “committed an overt act to further” the plan. *Id.* The elements of the claim are: “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” (*AREI II Cases* (2013) 216 Cal. App. 4th 1004, 1022.) Participation, cooperation, or unity of action in a conspiracy is typically proven by circumstantial evidence, including, “the nature of the act done, the relation of the parties, [and] the interests of the alleged conspirators.” (*Rickley v. Goodfriend* (2013) 212 Cal. App. 4th 1136, 1166.)

Liability for aiding and abetting an intentional tort may be imposed if the person “(a) knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” (*IIG Wireless*, 22 Cal. App. 4th at 653-654.) “[I]t necessarily requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act.” (*Id.* at 654.) However, a person may be liable even in the absence of any independent duty to the plaintiff. (*Nasrawi v. Buck Consultants LLC* (2014) 231 Cal. App. 4th 328, 345.)

The evidence shows Nano gave substantial assistance to, and acted in concert with, the MOM Respondents in fraudulently inducing Claimants to enter into the JV.²⁵ Gressak’s actions in particular indicate Nano and the MOM Respondents reached a “mutual understanding to accomplish a common and unlawful plan,” required for conspiracy.²⁶ Nano knew of the MOM Respondents’ fraud, as required for aiding and abetting. (*IIG Wireless*, 13 Cal. 5th at 654.)

²⁵ A bank is not immune simply by virtue of its role as a bank – liability can be found where, for example, a bank “allow[s] a person to deposit a check, payable to someone else, into a personal account, under circumstances that should have alerted the bank to the possibility of fraud.” (*Casey v. U.S. Bank Nat’l Ass’n* (2005) 127 Cal. App. 4th 1138, 1151, n.3.) The Arbitrator notes these circumstances are comparable to Nano’s diversion of the Nano Loan proceeds from the MOM JV Entities directly into a Continuum bank account.

²⁶ The Arbitrator finds Gressak’s self-serving contrary testimony carried little weight, as it was not credible or consistent with the documentary evidence. Regardless, his testimony as to Nano’s obligations and responsibilities did not materially move the needle in either direction. The documents told the story.

As to Nano's knowledge of and active participation in the fraud, Nano had an existing relationship with Honarkar, having issued him multiple loans prior to the JV negotiations, and Nano was aware Honarkar and 4G were the owners of the properties used to secure the Nano Loan. (Exs. 123; 130; 215 at 3-7, 16, 18-21.) Honarkar testified he sought out Gressak's advice because he believed he and Gressak were friends, and he trusted Gressak when Gressak introduced him to Makhijani for purposes of discussing a potential JV with Makhijani's investors. (Ex. 52; 6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) Again, the ties and cross-connections between Nano, Continuum, and Makhijani run deep. (Ex. 1000 at 102:12-103:14, 181:18-190:6, 200:20-201:3; 6.26 Tr. at 587:24-588:22, 797:12-799:16.)

Against that background, Nano issued the \$150 million LOI to Honarkar on May 19, 2021, for a loan to refinance (with other lenders) the LoanCore debt. (Ex. 106.) The \$150 million Nano loan was to be secured by the same properties used to secure the \$20 million Nano Loan. (Exs. 106, 130.) Though Nano now claims it did not have the capacity to make a \$150 million loan, Gressak actively perpetuated the pretense in the days ahead of the "closing." (Exs. 139, 211, 171; Ex. 1000 at 40:9-41:6; 6.26 Tr. at 606:20-607:16 [Buchanan – funding would have been "near impossible"].) Gressak was aware the MOM Respondents had misrepresented only three lenders would be involved in the LoanCore refinance (First Choice, Preferred, and Lone Oak). (Exs. 187, 229.) In fact, Nano used the \$150 million LOI to gather information about Honarkar's properties, failing to differentiate between the \$150 million Nano LOI and the \$20 million Nano Loan in their due diligence communications. (Exs. 4017-4020, 123.)

Simultaneously, Nano was working with Continuum/Makhijani/Shyam on the \$20 million Nano Loan to the MOM JV Entities. On May 20, 2021, prior to the execution of the Term Sheet on May 24, 2021 (Ex. 148), Nano issued the Nano Loan LOI to Shyam, which contemplated securing the Nano Loan with properties Nano knew were owned by Claimants. (Exs. 130, 215.) Nano did not include Honarkar on any correspondence about the \$20 million Nano Loan nor did it seek his consent to encumber the properties it knew belonged to him and 4G. Though Nano points to the Term Sheet as providing it authority to issue the Nano Loan to the MOM JV Entities, the Term Sheet does not mention the MOM JV Entities by name nor did they even exist before the Operating Agreements were signed on June 8, 2021.²⁷

Nano knew the MOM Respondents intended to use the Nano Loan proceeds as their initial contribution to the JV because Makhijani told Gressak so before the Nano Loan LOI was even issued to Shyam. (7.8 Tr. at 2729:17-2730:6; 2549:5-2550:2.) But Nano never revealed the MOM Respondents' intent as to the initial contribution in any written communications or documents that might have alerted Honarkar. (*Id.* at 2730:7-2731:13, 2734:6-2739:19.)

²⁷ While Nano says its actions were similar to the other banks involved in the LoanCore refinance, it is important to note the other banks are on different footing as to their connections with Continuum and Makhijani. Also, Honarkar was aware of and consented to the other bank loans and related encumbrances on his properties. (Exs. 220-222.)

Internal records state Nano made the Nano Loan to “strengthen[] the Banc’s position of the history and relationship with sponsors of the joint-venture [*i.e.*, Continuum and Makhijani].” (Ex. 215 at 4.) Gressak was “strongly advocating for this loan to get made” and “overrode opposition to it” from other bank officers, including Buchanan and the chief lending officer, who were concerned the loan was not secured and would be scrutinized by regulators. (6.26 Tr. at 573:15-577:11, 586:2-24, 588:15-589:23.)

Buchanan drafted the June 7, 2021 memo to the Nano Loan Committee to memorialize the unusual request for the loan proceeds to be transferred to an entity other than the borrower, placing the onus on Gressak. (Ex. 240; 6.26 Tr. at 593:8-597:3 [Buchanan was concerned about “direction that [Nano] had received, as well as the optics with this particular loan”]; Ex. 1000 [Nano PMK – “Q: Was the loan committee consulted about the change in disbursement? A: I don’t think so”].)

But the June 7, 2021 internal memo falsely stated the loan proceeds had to be placed in Continuum’s account because the MOM JV Entities had indicated the refinancing escrow was not open and could not receive transfers. (Ex. 240.) Both Makhijani and Shyam testified they never told Nano the refinancing escrow was not yet open. (7.3 Tr. at 2159:20-2164:11; 7.12 Tr. at 3685:10-3686:10.) And Nano obviously knew the refinancing escrow was open on June 7 – it wired \$20 million from Continuum’s bank account to the refinancing escrow less than an hour after first depositing the funds in Continuum’s account. (Exs. 270, 272, 278 at 2.)

Nano closed and funded the \$20 million Nano Loan on June 7, 2021, before the MOM JV Entities’ Operating Agreements were finalized and executed, meaning the MOM JV Entities did not exist on the date the Nano Loan was made to them. (Ex. 4104 at 4-5.) Nano also issued the Nano Loan based only on the signatures of Continuum employees, not Honarkar. (Ex. 239.)

Nano also placed the \$20 million Nano Loan proceeds into a bank account belonging to Continuum, knowing Continuum was not the borrower and the assets used to secure the loan belonged to Honarkar and 4G. (Ex. 240 [“Gressak has spoken with the Borrower and has approved the funding of the account”].) Nano routed this money to the Continuum bank account at Shyam’s request, based on documents signed by Shyam, without verifying Shyam’s authority to effectuate the transfer to his own corporate account on behalf of the MOM JV Entities. (Exs. 237, 270; 7.12 Tr. at 3794:20-3799:6 [Prendergast – “[Gressak] just told me that, yes, Deba Shyam, by reviewing the term sheet, he has the authority...I just took [Gressak’s] word for it...”].) Shyam is not mentioned in the Term Sheet, the only JV document in existence at the time of the Nano Loan funding. (Ex. 148.) Nano also violated its own policy by failing to get a request in writing from all three of the MOM JV Entities as borrowers to reroute the funds from the approved use, since Shyam was the Manager of only the MOM CA Manager, not the MOM AS Manager or the MOM BS Manager. (Ex. 1000 at 139:10-15 [Nano PMK testimony].)

Nano then took security interests under the deeds of trust securing the Nano Loan, knowing they were Claimants' properties, and did so without Honarkar's consent. Nano only publicly recorded these deeds of trust after receiving a Cease and Desist Order from the Federal Reserve. (Exs. 234-236, 239 at 88-127, 515 at 6-47, 514 at 2; Ex. 4127 [Gressak – "these are nothing but AOC [abundance of caution] liens" and "I don't need to be on this anymore"].)

Finally, Nano collected fees and interest on the Nano Loan, despite knowing of the MOM Respondents' fraud. (Exs. 1087, 215, 389.) And after this action was filed, Nano obtained an indemnity from the MOM Respondents for Claimants' claims that, *inter alia*, the Nano Loan was obtained without "the necessary consent from Mohammad Honarkar." (Ex. 869, ¶ 19.)

Even after the JV was formed, Nano continued to assist the MOM Respondents by concealing material information from Honarkar. Nano issued the \$1 million Tesoro Loan without Honarkar's knowledge. Then, in response to a 4G employee's question concerning receipt of a related monthly billing statement, Nano indicated it was "a billing error and not applicable to Tesoro." (Ex. 2723.) Nano also complied with Kluchin's instructions to conceal information from Honarkar and his team. (Ex. 473 [Kluchin - "No one from 4G should be on this account. This is very important...Only Deba and I"]; Ex. 590 [Kluchin – "DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread"].) Similarly, after the parties' dispute erupted in February 2023, Nano assisted the MOM Respondents by restricting Honarkar's access to all JV bank accounts, including those for 4G. (Ex. 677.)

Nano cites California's economic loss rule and argues Claimants' fraudulent inducement claim is barred. However, the California Supreme Court recently clarified, "[t]he doctrine only applies to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in *Sheen*." (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal. 5th 1, 38; citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal. 5th 905, 922.) The economic loss rule does not apply to the intentional fraudulent inducement at issue here.

In summary, the record is replete with evidence Nano acted in concert with, and was aware of, the MOM Respondents' fraudulent inducement. The Arbitrator therefore finds Nano jointly and severally liable with the MOM Respondents for conspiracy to commit and aiding and abetting the commission of the fraudulent inducement. As a consequence, the Arbitrator again finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after an accounting is completed; or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet.²⁸ (*Chapman*, 220 Cal. App. 4th at 234; Civ. Code § 1692.)

²⁸ This finding may also constitute a basis for the MOM JV Entities to set aside the Nano Loan documents (including the loan agreement, the deeds of trust, and the subsidiary LLC membership interest assignments), in addition to their invalidity for lack of authority as discussed in § III.A.1. above.

I. Claimants’ Derivative Conversion and Penal Code Section 496 Claims Against Nano (FAC at 28-29, 30-31)

Claimants argue Nano is separately liable to the MOM JV Entities for conversion of the \$20 million Nano Loan and the \$1 million Tesoro Loan proceeds, which belonged, respectively, to the MOM JV Entities and Tesoro Redlands as the borrowers (Exs. 239, 411), because Nano knowingly and actively transferred the proceeds of those loans to others. (§ III.D. above.)

Claimants also argue Nano violated Section 496 because it concealed and withheld, and aided the MOM Respondents in concealing and withholding, the Nano and Tesoro Loan proceeds; and that the evidence shows Nano did so “not innocently or inadvertently, but with careful planning and deliberation.” (*Siry*, 13 Cal. 5th at 362.) The Arbitrator agrees.

So, Nano is liable to the MOM JV Entities for conversion and violation of Section 496.

J. Claimants’ Derivative Breach of Contract Claim Against Nano (FAC at 37)

Because the Arbitrator has determined Nano converted the Nano Loan proceeds by transferring them to Continuum, rather than to the MOM JV Entities, Claimants’ “alternative” breach of contract claim based on the Nano Loan agreement is irrelevant.

K. Claimants’ Accounting Claim Against the MOM Parties (FAC at 26)

Claimants seek an accounting of the MOM JV Entities’ books and records by an independent third party, from the creation of the JV to the present. “An action for an accounting has two elements: (1) ‘that a relationship exists between the plaintiff and defendant that requires an accounting’ and (2) ‘that some balance is due the plaintiff that can only be ascertained by an accounting.’” (*Sass v. Cohen* (2020) 10 Cal. 5th 861, 869.)

Both prongs are satisfied here. First, the parties are in a business relationship with each other, as members and managers of the MOM JV Entities, responsible for owning and operating real estate assets worth hundreds of millions of dollars. Second, a balance is owed to Claimants that can only be ascertained by an accounting. The Operating Agreements required the MOM Parties to create and maintain adequate books and records for the MOM JV Entities, to provide regular financial reporting to Claimants, and to allow inspection of the complete books and records upon request; but they have failed to fulfill these obligations. (§ III.A.5. above; Ex. 313, 314, 315 §§ 12.1, 12.2; Ex. 1377, 6.24 Tr. at 250:1-254:1; Ex. 659; 7.8 Tr. at 2533:16-2539:19.) As a result, none of the damages experts could make an accurate determination of the JV’s income, expenses, assets, or liabilities. (7.9 Tr. at 3008:6-3012:7, 3023:1-7.)

An accounting is particularly warranted here because, absent one, Claimants have no way to determine the full scope of the MOM Respondents' misconduct and the resulting damages. The MOM Parties remain in full control of the MOM JV Entities, and have excluded Claimants since Spring 2023. (Ex. 677; 7.12 Tr. 3850:12-3851:5; 6.25 Tr. at 459:20-23.) Claimants thus have no way of knowing what the MOM Respondents have done in almost two years.²⁹

The MOM Respondents' arguments against an accounting are meritless. They claim neither Claimants nor the MOM JV Entities are owed any money, because: (a) there is no validity to any of Claimants' claims; and (b) the undisputed evidence shows that, in addition to the initial \$30 million capital contribution, the MOM Members advanced \$89.5 million to the JV, \$49.5 million of which remains outstanding. The Arbitrator rejects these arguments.

The Arbitrator has found the majority of Claimants' claims are valid. Arbitrator also finds there is no reliable evidence establishing the fact or amount of the claimed "advances."³⁰ More broadly, due to Respondents' active concealment, Claimants have been unable to verify the accuracy and completeness of the few financial records the MOM Respondents have provided. The accounting is also needed to verify the amount of the MOM Respondents' claimed offsets.

Claimants have proven they are entitled to an accounting.

L. Claimants' Declaratory Relief Claim Against the MOM Parties (FAC at 27)

The parties have disputes as to their respective rights, duties, powers, and obligations under the Operating Agreements, and these disputes are generally amenable to declaratory relief. (CCP § 1060.) The Arbitrator finds Claimants are entitled to the declaratory relief they seek on the following specific issues and for the following reasons:

(1) The MOM Respondents fraudulently induced Claimants into entering into the Operating Agreements.

(2) On July 24, 2023, the MOM Respondents committed forcible entry and detainer at the 4G corporate offices. As a result, Claimants are entitled to immediate possession of the 4G offices. The MOM Respondents should be ordered to return all information and things removed from the 4G offices and to compensate Claimants for the value of any items lost or destroyed.

²⁹ The MOM Respondents admitted their discovery responses were incomplete as to what loans they obtained related to JV properties, and that they routinely did not inform Honarkar about large financial decisions because they "didn't think it was necessary." (6.27 Tr. at 1008:2-17, 1012:14-16, 1071:19-1073:10; see also Exs. 967, 3623.)

³⁰ The MOM Respondents and Nano also euphemistically refer to these "advances" as "infusions," a term seemingly calculated to obfuscate whether they were Contributions or loans to the MOM JV Entities.

(3) Palm Desert Collective Resorts LLC, 424 Marguerite Ave. LLC, and 8871 Research Dr. LLC are “Held-Back LLCs” under the ACA and the Operating Agreements and thus, were never contributed to the MOM JV Entities. (Ex. 304 and Ex. E attached thereto; Exs. 313-315.)

(4) The following entities appear on Exhibit C of the Operating Agreements and ACA but were never intended by the parties to be Contributed Entities to the JV: 4G (Ex. 583 [Letter Agreement – 4G is the MO Member]), Modan LLC (majority owned by Niazi), BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing82 LLC, and Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

(5) The sole “Projects” as defined in the Operating Agreements and ACA are Hotel Laguna LLC and Newport Crossing (Aryabhata LLC). (Ex. 315, § 1.45; Ex. 689, § 1(a).)

As to issues (1) and (2), the Arbitrator has found in favor of Claimants on the fraudulent inducement, forcible entry, and forcible detainer claims. The Arbitrator has considered and rejected all of the MOM Respondents’ factual and legal arguments against these claims.

As to issue (3), the MOM Respondents make no reasoned argument to support their bare assertion that these “Held-Back LLCs” were intentionally contributed pursuant to the ACA.

As to issue (4), the parties make a host of legal and factual arguments, principally focused on 4G and Modan, and the proper interpretation of the Operating Agreements and the ACA. However, the applicable law and the weight of the evidence, including the admissible parol evidence,³¹ shows: 4G and Modan were not intended to be “Other Owned LLCs” under the Operating Agreements (Exs. 313-315, § 1.40 and Ex. C), nor were they intended to be “Contributed Assets” or “MOM CA LLCs” under the ACA (Ex. 304, §§ 1.40, 2(a) and Ex. C). The Letter Agreement (Ex. 583, ¶ 3) further supports these conclusions. And, at least as to 4G (a corporation, not an LLC), the opposite conclusions would mean 4G is both a Member and an asset of the MOM JV Entities. This interpretation would be absurd.

As to issue (5), the MOM Respondents make no argument in their briefs to support their claim it “fails for the reasons set forth above, section [*].” (Brackets and content in original.)

³¹ See *Nw. Nat’l Ins. Co. v. Esmark, Inc.* (Del 1996) 672 A.2d 41, 43 [courts may consider extrinsic evidence where there is an ambiguity in the contract] and *Peden v. Gray* (Del. 2005) 886 A.2d 1278, 2005 WL 2622746, at *2 [“parol evidence is admissible to resolve a contractual term that is ambiguous”]; see also *Rosenfeld v. Abraham Joshua Heschel Day Sch., Inc.* (2014) 226 Cal. App. 4th 886, 897 (same).

M. MOM Respondents’ (Counter) Claims Against Honarkar

The MOM Respondents claim Honarkar is liable for trespass, conversion, violation of Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory and injunctive relief.³² All of these claims depend on the existence and enforceability of the Operating Agreements and the Other JV related Agreements. But the Arbitrator has found Claimants may rescind these agreements for fraud in the inducement and failure of consideration. In any event, the MOM Respondents’ prior material breach of the Operating Agreements discharged Honarkar from any further duty to perform thereunder. (*Level 4 Yoga, supra*, at *27 [“Delaware law firmly supports the principle that a party to a contract is excused from performance if the other party is in material breach of his contractual obligations”]; see also Honarkar Response to MOM Respondents’ Demand, at 4-5, Twelfth Affirmative Defense.) It follows the MOM Respondents’ (counter) claims against Honarkar must fail.

N. Remedies

1. Rescission With Restitution and Consequential Damages

Claimants are entitled to rescind the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, all on account of Respondents’ fraud in the inducement. Claimants are also entitled to rescind the Operating Agreements and the Other JV Related Agreements, for the failure of consideration due to the failure to provide the initial contribution. (§§ III.A.6., III.B.2., III.G., and III.H. above.)

In cases like this, “When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both.” (Cal. Civ. Code § 1691; *Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal. App. 5th 881, 888.)

“Rescission extinguishes the contract, terminates further liability, and restores the parties to their former positions by requiring them to return whatever consideration they have received. Thus, the relief given in rescission cases—restitution and in some cases consequential damages—puts the rescinding party in the status quo ante, returning him to his economic position before he entered the contract.” (*Sharabianlou v. Karp* (2010) 181 Cal. App. 4th 1133, 1145.)

³² These claims (except the Section 496 claim) were asserted in the demand filed by the MOM Respondents and the MOM JV Entities in the MOM Arbitration on September 27, 2023, together with Attachment 1 and the exhibits thereto, including the First Amended Complaint originally filed in OCSC Case No. 30-2023-01322886.

Where rescission is warranted, “[t]he aggrieved party shall be awarded complete relief, including restitution of benefits, if any, conferred by him as a result of the transaction and any consequential damages to which he is entitled.” (Civ. Code § 1692; *Wong v. Stoler* (2015) 237 Cal. App. 4th 1375, 1387–88, 1389–90.) Although in general each party must return the consideration they received, if “defendant has been guilty of fraudulent acts or conduct which have induced the agreement between him and the plaintiff,” courts “are not so much concerned with decreeing that defendant receive back the identical property with which he parted in the transaction, as they are in declaring that his nefarious practices shall result in no damage to the plaintiff.” (*Wong, supra*, 237 Cal. App. 4th at 1389.) And the defrauding party has the burden to prove any offsets to which they claim they are entitled. (*McCoy v. West* (1977) 70 Cal. App. 3d 295, 302-303; *Gentry v. Kelley Kar Co.* (1961) 193 Cal. App. 2d 324, 337; *Grill v. Hunt* (1992) 6 Cal. App. 4th 73, 79 [“The implicit rationale of these cases is that risk of any difficulty in proof should not inure to the benefit of the party responsible for the failure of the contract”].)

All told, if Claimants elect rescission, they will be entitled to restitution and consequential damages in amounts to be determined following the accounting, and Respondents will have the burden of proving their right to any offsets.

2. Damages Without Rescission

In the alternative, if Claimants elect to affirm and retain the benefits of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, then they will be entitled to recover damages for fraud in the inducement and breach of the Operating Agreements. (§§ III.A. and III.B. above.) While the fact of these damages is certain, and some amounts are known, the total amount will be determined following the accounting.

3. Derivative Damages

With or without rescission, Claimants are entitled to recover damages from Respondents, for the derivative conversion, Section 496, and unjust enrichment claims on behalf of the MOM JV Entities. (§§ III.D., III.E., III.F. and III.I. above.) Spindler calculated Respondents’ actions caused at least \$45,011,937 and at most \$169,845,578 in damages to the MOM JV Entities themselves. (Exs. 1006, 1509; 7.9 Tr. at 3081:17-3082:1.) The Arbitrator will determine the amount of these damages (including any trebling) after the accounting is complete. The MOM Respondents are liable for the total, but Nano is only responsible for \$21 million of the total (\$20 million Nano Loan plus \$1 million for the Tesoro Loan). (Exs. 1006, 1509; 7.9 Tr. at 3035:13-3036:14.) Also, Respondents may only be liable for the \$20 million Nano Loan to the extent the MOM JV Entities remain as the borrowers, their properties are encumbered by the Nano deeds of trust, and their subsidiary LLC membership interests are pledged as security.

4. Punitive Damages

To recover punitive damages Claimants must prove, by clear and convincing evidence, that Respondents have “been guilty of oppression, fraud, or malice....” (Civ. Code § 3294.) Claimants argue they have proven oppression, fraud, and malice. The MOM Respondents argue they have not proven oppression, fraud, or malice. The Arbitrator has found Claimants have proven, by clear and convincing evidence, that Respondents committed fraud in the inducement. (§ III.A. above.) On this basis alone, Claimants are entitled to punitive damages. (Civ. Code § 3294(c)(3).) The Arbitrator further finds, based upon the totality of the evidence, Claimants have proven, by clear and convincing evidence, that Respondents have been guilty of oppression and malice as those terms are defined in Civil Code section 3294(c)(1) and (c)(2). However, until the accounting is complete, the full nature and extent of Respondents’ wrongdoing, the damages Claimants have suffered as a result, and the other factors the Arbitrator will need to consider when awarding punitive damages cannot be determined. (See generally, 6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1727- 1785.) Therefore, the Arbitrator will determine the amount of punitive damages to be awarded after the accounting is complete.

5. Attorney Fees

As the prevailing parties in this arbitration, Claimants are entitled to recover their attorney fees, in an amount to be determined. (Ex. 313-315, § 17; Civ. Code § 1717; *Hastings v. Matlock* (1985) 171 Cal. App. 3d 826 [attorney fees proper when contract is rescinded for failure of consideration or for intentional misrepresentation]; Section 496(c); and 6 Del. C. § 18-1004.)

6. Interest

Claimants claims for pre and post-judgment interest will be resolved after the accounting is complete and the Arbitrator determines the amount of damages to be awarded.

7. Receiver

The MOM Respondents have had complete control of the JV since they excluded Honarkar in 2023. (Ex. 677; 6.25 Tr. at 459:20-23.) While the Arbitrator cannot appoint a receiver (*Marsch v. Williams* (1994) 23 Cal. App. 4th 238), one is necessary to place the JV in “safe hands” and to prevent the MOM Respondents from further dissipating the JV’s assets before the accounting is completed and this arbitration is concluded. Claimants’ interests in the JV’s assets are more than “probable” and the MOM Respondents conduct prior to and during this arbitration shows the JV’s assets are certainly “in danger of being lost, removed, or materially injured.” (CCP § 564, subd. (b)(1).) In addition, a receiver is “necessary to preserve the [JV’s] property [and] the rights of [Claimants].” (CCP § 564, subd. (b)(9).)

IV. SUMMARY OF CONCLUSIONS AND FURTHER PROCEEDINGS

1. Claimants have proven their fraudulent inducement claim against Makhijani, Continuum and the MOM Members; and Claimants are therefore entitled to elect the alternative remedies of either compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A., III.G., and III.N.1 .above; ¶ 13 below; FAC at 22-23.)
2. Claimants have proven their breach of contract (Operating Agreement) claims against the MOM Members and the MOM Managers; and Claimants are therefore entitled to the alternative remedies of compensatory damages or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.B.1.-B.5. and III.N.2. above; ¶ 13 below; FAC at 24-25.)
3. Claimants have not proven their breach of contract (Management Agreement) claim against the MOM Members and the MOM Managers. (§ III.B.6. above; not pleaded in FAC.)
4. Claimants have proven their forcible entry and forcible detainer claims against Makhijani, Continuum and the MOM Parties; and Claimants are therefore entitled to restitution of the subject premises (775 Laguna Canyon Road) and incidental damages in amounts to be determined. (§§ III.C. and III.G. above; ¶ 13 below; FAC at 31-33.)
5. Claimants have proven their derivative conversion claim against Makhijani, Continuum, the MOM Parties and Nano; and the MOM JV Entities (as Derivative Claimants) are therefore entitled to recover compensatory damages in amounts to be determined. (§§ III.D., III.G. and III.I. above; ¶ 13 below; FAC at 28-29.)
6. Claimants have proven their derivative Section 496 claim against Makhijani, Continuum, the MOM Parties, and Nano; and the MOM JV Entities (as Derivative Claimants) are therefore entitled to recover compensatory damages in amounts to be determined. (§§ III.E., III.G., and III.I. above; ¶ 13 below; FAC at 30-31.)
7. Claimants have proven their derivative unjust enrichment claim against Makhijani, Continuum, and the MOM Parties; and the MOM JV Entities (as Derivative Claimants) are therefore entitled to recover compensatory damages in amounts to be determined. (§§ III.F. and III.G. above; ¶ 13 below; FAC at 29-30.)
8. Claimants have proven their conspiracy to commit and aiding and abetting fraudulent inducement claims against Nano; and Claimants are therefore entitled to the alternative remedies of compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A. and III.H. above; ¶ 13 below; FAC at 33-37.)


9. Claimants have not proven their derivative breach of contract claim against Nano. (§ III.J. above; FAC at 37.)
10. Claimants have proven their accounting claim against the MOM Parties; Claimants are therefore entitled to the accounting requested; and the accounting shall be the subject of further proceedings in this arbitration. (§ III.K. above; ¶¶'s 16 and 17 below; FAC at 26.)
11. Claimants have proven their declaratory relief claim against the MOM Parties; and Claimants are therefore entitled to the declaratory relief requested. (§ III.L. above; FAC at 27.)
12. The MOM Respondents have not proven any of their (counter) claims against Honarkar (including trespass, conversion, Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory or injunctive relief). (§ III.M. above.)
13. All amounts of restitution, consequential damages, compensatory damages, incidental damages, punitive damages and interest (if any) to be awarded to Claimants shall be determined in further proceedings in this arbitration. (¶¶'s 1, 2, and 4-8 above; and ¶¶'s 16 and 17 below.)
14. Claimants shall recover from Respondents attorney fees and costs, in amounts to be determined. (§ III.N.5. above; ¶¶'s 16 and 17 below; JAMS Rule 24(f) and 24(g).) Claimants shall file an application for fees and costs within 20 days after this Partial Interim Award is served. Respondents may file opposition within 10 days, and Claimants may file a reply within 5 days. The Arbitrator may rule on the application without conducting a hearing.
15. It is not intended this Partial Interim Award be subject to judicial review pursuant to the CAA (CCP §§ 1284, 1285) or the FAA (9 U.S.C. §§ 9, 10) or any other law, and the Arbitrator reserves jurisdiction over all claims submitted to arbitration until a Partial Final Award is issued.
16. This Partial Interim Award, together with the determinations regarding the amounts of attorney fees and costs to be awarded (¶ 14 above), shall be embodied in a Partial Final Award. It is intended the Partial Final Award will be subject to judicial review as to those issues finally determined therein, so the parties may return to the Superior Court and seek (i) confirmation of the Partial Final Award, and (ii) appointment of a receiver (§ III.N.7. above) to oversee the JV during the period in which the accounting and the further proceedings in this arbitration are conducted. The Arbitrator reserves jurisdiction to determine such additional issues as may arise between the parties, together with all issues not finally determined in the Partial Final Award, including those related in any way to the accounting and the determination of the amounts of restitution, damages, and interest to be awarded. (See JAMS Rules 24 and 25; *Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1437 [Arbitrator has the authority to issue a partial or interim award and to reserve jurisdiction to issue a final award on the remaining issues].)

17. After the accounting has been completed and the amounts of restitution, damages, and interest to be awarded have been determined; after all further proceedings in this arbitration have been concluded; and after all issues not finally determined in the Partial Final Award have been resolved; the Arbitrator will issue a Final Award which will include a supplemental award for attorney fees, costs, and expenses incurred in this arbitration through entry of the Final Award. (See JAMS Rules 24 and 25; ¶ 14 above; *Hightower, supra*, 86 Cal.App.4th at 1437-1441.

18. Consolidated Scheduling Order No. 100 shall remain in full force and effect and shall govern all further proceedings in this arbitration.

19. A virtual interim status conference shall take place at 8:30 a.m. on April 14, 2025. A further interim status conference or a final status conference will be scheduled at that time.

DATED: February 21, 2025



Hon. David A. Thompson (Ret.)

EXHIBIT 2

JAMS ARBITRATION
No. 5220003126
(Consolidated with JAMS Case No. 5200001122)

Mohammad Honarkar and 4G Wireless, Inc.,
individually and on behalf of MOM AS Investco LLC,
MOM BS Investco LLC, and MOM CA Investco
LLC,

Claimants and Derivative Claimants,

v.

Mahender Makhijani; Continuum Analytics, Inc.;
MOM AS Investor Group LLC; MOM BS Investor
Group LLC; MOM CA Investor Group LLC; MOM
AS Manager LLC; MOM BS Manager LLC; MOM
CA Manager LLC; and Nano Banc,

Respondents,

and,

MOM AS Investco LLC, MOM BS Investco LLC, and
MOM CA Investco LLC,

Nominal Respondents.

Consolidated case:

MOM AS Investco LLC, MOM BS Investco LLC,
MOM CA Investco LLC, MOM AS Investor Group
LLC, MOM BS Investor Group LLC, and MOM CA
Investor Group LLC,

Claimants,

v.

Mohammad Honarkar,

Respondent.

PARTIAL FINAL AWARD

Counsel:

For Claimant and Cross Respondent Mohammad Honarkar (“Honarkar”); Claimant 4G Wireless, Inc. (individually “4G,” and collectively with Honarkar, the “Claimants”); and Derivative Claimants MOM AS Investco LLC (“MOM AS JV”), MOM BS Investco LLC (“MOM BS JV”), MOM CA Investco LLC (“MOM CA JV”) (collectively, the “MOM JV Entities”):

Aaron May, Esq., Joseph Ybarra, Esq., Abigail E. Marion, Esq., Thomas Rubinsky, Esq., and Halpern, May, Ybarra, Gelberg LLP; and Sam Maralan, Esq., and Maralan Law, P.C.

For the MOM JV Entities:

Anthony Bisconti, Esq., and Bienert Katzman Littrell Williams, LLP.

Counsel for Respondents Mahender Makhijani (“Makhijani”) and Continuum Analytics Inc. (individually “Continuum,” and collectively with Makhijani, the “Makhijani Parties”):

Marc Cohen, Esq., and Cohen Law Group, APC.

For Respondents and Cross Claimants MOM AS Investor Group LLC (“MOM AS Member”), MOM BS Investor Group LLC (“MOM BS Member”), MOM CA Investor Group LLC (“MOM CA Member”) (collectively, the “MOM Members”) and MOM AS Manager LLC (“MOM AS Manager”), MOM BS Manager LLC (“MOM BS Manager”), MOM CA Manager LLC (“MOM CA Manager”) (collectively, the “MOM Managers”):¹

Michael Farrell, Esq., Scott Leipzig, Esq., Tim Hsu, Esq., Stephanie Roberts, Esq., Gabriela Perez, Esq., Leilee Ghassemi, Esq., Shauna Woods, Esq., Suzanne Kenney, Esq., and Allen Matkins Leck Gamble Mallory & Natsis LLP.²

For Respondent Nano Banc (“Nano”):

Ann Marie Mortimer, Esq., Lawrence DeMeo, Esq., Hakop Stepanyan, Esq., and Hunton Andrews Kurth LLP.

Arbitrator: Hon. David A. Thompson (Ret.)

Place of Arbitration: JAMS, Los Angeles, California

Date of Partial Final Award: May 23, 2025

¹ At times, the Arbitrator will refer to the MOM Members and the MOM Managers together as the “MOM Parties;” to the MOM Parties and the Makhijani Parties as the “MOM Respondents;” and to the MOM Respondents and Nano Banc as the “Respondents.”

² Allen Matkins also represented: (i) the MOM JV Entities, at all times prior to April 23, 2025, including during the Hearing and the post-Hearing briefing and argument, and (ii) Makhijani and Continuum, prior to November 9, 2023.

THE UNDERSIGNED ARBITRATOR, having been designated by JAMS in accordance with § 19.10 of the Operating Agreements (the “Operating Agreements”) for the MOM JV Entities, dated as of June 8, 2021, and having examined the claims, defenses, evidence, and arguments of the parties; now finds, concludes, rules, orders, and issues this Partial Final Award:

I. INTRODUCTION AND KEY PROCEDURAL HISTORY

This is a real estate joint venture dispute centered on fraud and breach of contract claims. The joint venture (“JV”) comprises a portfolio of commercial properties that were previously owned by Claimants and are now owned by the MOM JV Entities. The MOM JV Entities are managed by the MOM Managers, and the members of the MOM JV Entities are the MOM Members and Honarkar. Claimants filed the operative First Amended Statement of Claims in Arbitration (“FAC”) on October 13, 2023. Claimants claim they were fraudulently induced by Makhijani, Continuum, and the MOM Parties into signing the Operating Agreements (Exs. 313-315) and other JV related agreements (the “Other JV Related Agreements”),³ and further claim Nano is liable for conspiracy to commit and aiding and abetting the commission of fraudulent inducement by the MOM Respondents.⁴ Claimants also claim the MOM Parties breached the Operating Agreements and a Management Agreement that predated the JV (Ex. 37, the “Management Agreement”). In addition, Claimants claim the MOM Respondents violated California’s forcible entry and detainer laws in connection with an incident at the 4G offices.

Finally, Claimants assert derivative claims on behalf of the MOM JV Entities (as Derivative Claimants) against Makhijani, Continuum, the MOM Parties, and Nano for conversion and violation of Penal Code section 496 (“Section 496”), for unjust enrichment against the MOM Parties, and for breach of contract against Nano based on the loan agreement between the MOM JV Entities and Nano.

Nano filed an Answer to the FAC on November 3, 2023. The MOM Parties and the MOM JV Entities (represented by Allen Matkins) and Makhijani and Continuum (represented by the Cohen Law Group) filed Answers to the FAC on November 21, 2023.

In a separate (now consolidated) demand for arbitration filed with JAMS on September 28, 2023, and amended on June 6, 2024, the MOM JV Entities and the MOM Members alleged (counter) claims against Honarkar for conversion, intentional interference with contractual relations and prospective economic advantage, and declaratory relief in connection with the parties’ rights and obligations under the Operating Agreements and other JV agreements. They also brought claims for trespass related to incidents at two JV properties in Laguna Beach.

³ The Other JV Related Agreements include: the June 8, 2021, Asset Contribution Agreement (Ex. 304, the “ACA”); the June 8, 2021, Release Agreement (Ex. 317, the “Release”); the June 07, 2021, Consulting Agreement (Ex. 232).

⁴ Nano became a party pursuant to the October 11, 2023, Arbitration Agreement between Claimants and Nano.

Motions Contesting Arbitrability and Jurisdiction

On November 29, 2023, the MOM Parties, Makhijani and Continuum filed motions contesting arbitrability and jurisdiction. Both motions were denied in the Arbitrator’s “Rulings on Motions Contesting Arbitrability,” dated January 3, 2024. Among other things, the Arbitrator rejected: (1) the MOM Parties’ arguments that the FAC was not arbitrable, and should be transferred back to state superior court for resolution because (i) Claimants’ declaratory relief and accounting claims could not be arbitrated, and (ii) Claimants had waived their right to arbitration; and (2) Makhijani’s and Continuum’s assertions that (i) the issue of whether Makhijani and Continuum could be compelled to arbitrate under the Operating Agreements had to be determined by the court, not the Arbitrator, since they are not signatories to the Operating Agreements, and (ii) Makhijani and Continuum could not be compelled to arbitrate in any event.

Other Pre-Hearing Proceedings, Orders and Rulings

Preliminary, interim, final status, and discovery conferences, motion hearings, and other pre-hearing proceedings were conducted on the following dates: February 2, March 15, March 20, March 22, May 25, May 29, and June 12, 2024. The Arbitrator issued: Scheduling Order Nos. 1-5, and Consolidated Scheduling Order Nos. 100 and 101; and rulings on discovery disputes, claim amendments, hearing logistics, and motions to continue the arbitration hearing.

The Evidentiary Hearing and the Partial Interim Award

The evidentiary hearing (“Hearing”) was conducted on June 24-28 and July 1-12, 2024. The following witnesses testified: Honarkar, Brian Buchanan, Michael Kluchin (“Kluchin”), Makhijani, Kara Cobb, Marc Cohen, Glenn Taxman, Daniel Niazi, Anthony Gressak (“Gressak”), Michael Spindler (Claimant expert), Frederick Gartside, Joseph Pohlot (Respondent expert), Deba Shyam (“Shyam”), Max Prendergast, and Wayne Platt (Respondent expert). The documents and deposition transcripts in the Joint Admitted Exhibit List dated August 22, 2024, were admitted into evidence. The Hearing was reported by Katherine Thomas, CSR 14378.

At the conclusion of the Hearing, the parties confirmed there was no further evidence for the Arbitrator to consider. The parties filed simultaneous closing, opposition and reply briefs on August 23, 2024, September 20, 2024, and October 4, 2024, respectively.

Virtual oral closing argument was conducted on December 17, 2024, the matter was then deemed “closed” by application of JAMS Rule 22(i) and by the agreement of the parties, and a Partial Interim Award (the “Partial Interim Award”) was timely rendered on February 21, 2025.⁵

⁵ See 7.12 Tr. at 3940:21 through 3941:5, and the discussion which follows; *see also* JAMS Rule 24(a) and the January 10, 2025, Notice of Award Due Date.

Post-Hearing Proceedings, Orders and Rulings

On February 28, 2025, the MOM JV Entities filed for Chapter 11 bankruptcy. On April 28, 2025, the Bankruptcy Court, modified the automatic stay “to allow the Honarkar Parties to: (i) pursue and obtain an award of attorneys’ fees and costs in the Arbitration; and (ii) proceed in the ... bankruptcy cases ... with the accounting granted in the Arbitration Award”⁶ The Arbitrator conducted Post-Hearing status conferences and motion hearings on April 14, May 2, and May 12, 2025; issued Consolidated Scheduling Order Nos. 102-106; and issued rulings on Claimants’ request to clarify one aspect of the Partial Interim Award, and on Claimants’ motion for attorney fees and costs (§ III.N.5.; and § IV.14. below).

II. FACTS

These factual findings are necessary to this Partial Final Award. They are derived from admissions in the pleadings and the testimony, argument, and evidentiary exhibits presented at the Hearing. All relevant evidence that has a tendency in reason to prove or disprove a fact of consequence to this decision has been considered, even if not specifically mentioned herein. To the extent that these findings differ from any party’s position, that difference is the result of determinations by the Arbitrator as to witness credibility, relevance, burdens of proof, legal principles, and weighing of the evidence, both oral and written.

Honarkar’s Cell Phone Business, Real Estate Business and Financial Distress

Shortly after Honarkar moved to the United States from Iran, in the mid-1980’s, he started a small business selling wireless cell phones. Honarkar built the cell phone business, which ultimately became 4G, into a highly successful enterprise that included 160 stores in five states. He currently owns 100% of 4G, though he sold the cell phone business assets of 4G to Verizon Wireless in January 2016.

With the proceeds from the sale of the cell phone business, Honarkar began amassing a real estate portfolio. Properties were purchased both in his name and through 4G and held by various limited liability companies (“LLCs”). Over time, Honarkar developed the portfolio into an operation worth several hundred million dollars. The properties ranged from large hotels to commercial real estate to individual homes used as luxury vacation rentals, most of which were located in Laguna Beach or Palm Desert and the surrounding areas.

By March 2020, COVID-19 surged and the global pandemic was declared. Over the following year, the pandemic had a devastating effect on the hospitality and commercial industries. Honarkar’s real estate businesses were similarly affected.

⁶ On May 5, 2025, the Bankruptcy Court also dismissed the Chapter 11 bankruptcy filed by the MOM Members.

At that time, Honarkar was also involved in a contentious divorce. In July 2020, his former wife obtained the appointment of a receiver, Blake Alsbrook, to oversee Honarkar's properties. (Ex. 3905.) In addition to the effects of the pandemic, Alsbrook reported the infrastructure, staff, and systems in place were "woefully inadequate" to profitably operate the properties in the portfolio. (Ex. 2008, ¶¶ 9(a), 9(b).) He also reported the accounting and tax practices were inadequate and corporate formalities were generally ignored, pointing out the "brazen" movement of funds after a special report on interference had been submitted to the court. (*Id.*, ¶¶ 9(b), 71.) Most importantly, Alsbrook reported the "cash on hand was woefully insufficient to make the vast loan, payroll, creditor and settlement payments." (*Id.*, ¶ 9(b).) To resolve the dispute with his wife and to remove the receivership, Honarkar entered into a stipulated judgment to pay his former spouse \$17.5 million on or before June 12, 2021. (Ex. 2107.) Alsbrook was discharged as receiver in late December 2020.

Around that time, a loan from LoanCore Capital to Honarkar (the "LoanCore Loan") in the original principal amount of \$195 million dollars was coming due. The LoanCore Loan was secured by, among other things, deeds of trust encumbering the majority of Honarkar's real estate assets, as well as a personal guarantee. In December 2020, Honarkar failed to make a \$136 million balloon payment when due, and the LoanCore Loan went into default.

In January 2021, at the request of LoanCore, a new receiver, Douglas Wilson, was appointed over the Honarkar properties that secured the LoanCore Loan. (Ex. 3716, at 10-11, 13-17.) LoanCore obtained the receiver on the basis that Honarkar had been diverting rents from the properties in which LoanCore asserted it had a security interest. (Ex. 3716, at 8-9, 15.) The receivership was to be in place until Honarkar refinanced and paid off the LoanCore Loan.

A few months after Wilson was appointed as receiver, DIG PFSS LBCP Holding Company LLC ("DIG") purchased the LoanCore Loan. Honarkar and his team were concerned that DIG intended to foreclose on the properties that secured the LoanCore Loan. (Exs. 4085, at 182; 2411 at 4.) These concerns were legitimate. DIG immediately acted and scheduled foreclosure sales to begin on June 15, 2021. (*Id.*)

Honarkar's Search for Funding and Introduction to Makhijani and Continuum

During the first half of 2021, under considerable time pressure as a result of the DIG purchase of the LoanCore Loan, the pending foreclosures, and the payment due to his former wife, Honarkar sought funding from multiple sources, including Nano. As expected, it was challenging for Honarkar to obtain financing, given the extraordinary time pressures, dollar amounts and risks involved, together with the uncertainties created by the pandemic.

Honarkar had previously borrowed money from Nano and had an existing relationship with Gressak, Nano's then-Chief Credit Officer (and later interim CEO). Gressak referred Honarkar to Makhijani at Continuum, an entity that acquires and manages distressed real estate assets for groups of investors. (Ex. 52.)

Both Makhijani and Continuum had established, long-standing, and deeply ingrained affiliations with Nano. Nano was founded by, among others, Continuum's legal owner, Shyam, along with several of Continuum's largest investors (Gerald Marcil, Andrew Stupin, and Bhajneet Singh Malik), all of whom provided millions in seed capital, remain shareholders in Nano, and have borrowed over \$100 million from the bank. (Ex. 1000 at 181:18-190:6.) Gressak, though no longer with Nano, remains a significant shareholder. (7.8 Tr. at 2609:22-25.) Makhijani is one of Nano's largest referral sources and is also involved in the bank's management. (Ex. 1000 at 200:20-203:3.) The relationships between Makhijani, Continuum, Nano, and their employees and investors including Shyam are interwoven and overlapping.

Ultimately, Nano and Continuum became the sole solution for Honarkar's financial difficulties. On May 19, 2021, Nano provided to Honarkar a letter of intent ("LOI") for a \$150 million loan to pay off the LoanCore Loan. (Ex. 106.) This loan was to be made by Nano and "participant banks" and be secured by deeds of trust on a number of Honarkar's properties. Though Gressak was actively signaling otherwise, Daniel F. Patrick, Nano's Person Most Knowledgeable ("PMK") witness testified (via deposition admitted into evidence) Nano was incapable of extending that amount of financing to anyone. (Compare Exs. 139 [Gressak May 21 email to Honarkar: "We are aware of foreclosure sales starting June 15th on the properties and we can close prior to that date"], 211 [Gressak June 3 email to Honarkar *et al.*, seeking update from Honarkar's counsel: "[W]e are ready to fund man!!!], and 171 [email thread with Gressak, Makhijani, Honarkar *et al.* on "imminent" refinance with \$150 million from Nano]; with Exs. 1000 at 40:9-41:6 [Patrick PMK testimony: \$150 million is "well beyond the bank's legal lending limit for a single loan"]; 7.8 Tr. at 2600:15-21 [Gressak testimony – "Q: And Nano Banc never would have approved Mr. Honarkar for a \$150 million loan, correct? A: Correct"].)

During this time, Honarkar was also negotiating the JV terms with Makhijani and Continuum. Most interesting, on May 20, 2021, one day after Nano provided the \$150 million LOI to Honarkar, Nano provided to Shyam an LOI for a \$20 million loan (the "Nano Loan") to the MOM JV Entities, entities that had not yet been formed, and the proceeds of the \$20 million Nano Loan were to be used to help pay off the LoanCore Loan. (Ex. 130.) The \$20 million Nano Loan was to be secured by an assignment of membership interests in 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC, and "abundance of caution" deeds of trusts encumbering properties held by these four subsidiary LLCs, all of which were then wholly owned by Claimants. (*Id.* at 2.) At that time there were no agreements between Honarkar and any of the MOM Parties.

The Term Sheet

On May 24, 2021, just days after Nano issued the \$20 million Nano Loan LOI to Shyam, Honarkar, 4G, and Continuum entered into the Term Sheet for the JV. (Ex. 148, the “Term Sheet”.) It was signed by Honarkar on behalf of 4G and by Makhijani on behalf of Continuum.

The Term Sheet contemplated an initial capital contribution of \$35 million by Continuum, characterized as “cash equity,” in addition to Continuum’s obligation to secure refinancing to pay off the balance of the LoanCore Loan, then estimated at \$140 million. (Ex. 148 at 2.) The initial contribution by Continuum was to be credited to two existing projects in Honarkar’s portfolio, Hotel Laguna, and a property in Los Angeles’ Koreatown, though both Honarkar and Kluchin, Director of Operations at Continuum, testified that half of the initial contribution (\$17.5 million) was first intended to be used to pay off the stipulated judgment in favor of Honarkar’s former wife. (*Id.*; 6.24 Tr. at 108:11-109.4; 6.28 Tr. at 1214:6-15.)

In exchange, Claimants were obligated to contribute their interests in the subsidiary LLCs that held title to some of the properties in their portfolio. (Ex. 148 at 2, Exs. A and C.) The Term sheet was binding on Honarkar but not Continuum. (Ex. 148 at 8-10.) So, Continuum could terminate at any time, but Honarkar could not pursue other refinancing options.

Aside from the Hotel Laguna and Koreatown projects, Honarkar was entitled to sell and/or refinance the other real estate assets covered by the Term Sheet, subject to Continuum’s qualified consent rights. (Ex. 148 at 8 [Managers provision].) Further, assuming Continuum received a 20% preferred return on all of its capital contributions, Honarkar was entitled to the entirety of the sale proceeds of those other assets. (*Id.* at 4-6 [Distributions provision].)

The Draft Operating Agreements

Glenn Taxman, Honarkar’s transactional counsel, offered to provide initial drafts of the Operating Agreements, but Continuum’s lawyers took the lead instead. On May 28, 2021, Kluchin shared draft Operating Agreements, not with Honarkar but with First Choice Bank, one of the banks through which Continuum was seeking financing to pay off the LoanCore Loan. (Ex. 1479 [attachments include MOM Manager Operating Agreements].) Kluchin did not send Honarkar and Taxman draft Operating Agreements until June 2, 2021. (Ex. 191.)

Everyone agrees the JV document negotiation and drafting process was chaotic and frantic. Kluchin pressured Honarkar into signing early, before the documents were finalized. (*E.g.*, Ex. 288 [Kluchin to Honarkar team – “We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap with the understanding the JV is not final until both attorneys...send final versions of the full agreements”]; Exs. 347, 352.)

There was a constant flurry of emails back and forth between the parties and their respective counsel, in which it was unclear whether comments from Honarkar's side had been acknowledged and/or incorporated in existing drafts or if comments from Honarkar's side had even been solicited. All of this confused the process further and caused additional delay. (Ex. 0217 at 2-3 [Taxman to Kluchin – "Why are you sending us a different JV Agreement now?...We are sticking with the prior document you sent to us for negotiating purposes...My partner is already 80% thru the other draft....[This] makes zero sense and it actually delays the process...I am going to run a redline of what [Kluchin] originally sent against this new document..."]; Ex. 2382 at 3 [Taxman to Continuum "Guys, time to cut to the chase here if we have any chance of getting to final documents. Please include your outside counsel on an email to us so we can deal directly with them. [Kluchin] playing middleman is slowing down the process and getting a redline of Document A vs. Document B is not helping the process""].)

Admittedly, the process included "lots of moving targets." (Ex. 217 at 3 [email from Makhijani to Taxman and Honarkar].) Many of the documents were approved piecemeal. The initial drafts of the Operating Agreements had blank or incomplete exhibits. (Compare Exs. 191 at 38-41; 276 at 14-18; 298 at 17-21, with Ex. 315 at 40-46.) Plus, Exhibit C to the draft Operating Agreements was supposed to list Honarkar's "Other Owned LLC's" to be contributed to the JV. (Ex. 315 at 43.) But Exhibit C was not finalized and sent to Honarkar and his team until after 11pm on June 7, 2021, the night before the JV formation and LoanCore refinancing closing date. (Ex. 2554.) To populate Exhibit C, Makhijani used a comprehensive list of entities owned by and affiliated with Honarkar's businesses provided by Dan Niazi, 4G's Chief Operating Officer, earlier that day, on June 7, 2021. (Ex. 1397.) According to Honarkar and Niazi, that list was provided only for the Continuum investor's due diligence purposes, not as a final inventory of contributed entities. (6.24 Tr. at 128:25-131:25; 7.5 Tr. at 2467:17-2471:13.)

The Final Operating Agreements

Because Continuum was unable to secure enough financing to pay off the LoanCore Loan, Makhijani proposed that Continuum reduce its initial contribution to \$30 million, and use it to "close the gap," despite Continuum's \$35 million initial contribution obligation in the Term Sheet. (Exs. 2411, 385; 6.24 Tr. at 139:7-141:6.) Honarkar testified these changes in the initial contribution terms prevented him from paying off his former spouse as agreed, and resulted in his loss of their former residence. (6.24 Tr. at 152:14-153:24.)

Still, the Operating Agreements were signed and the MOM JV Entities were formed on June 8, 2021. (Exs. 313 [MOM AS JV]; 314 [MOM BS JV]; 315 [MOM CA JV].) That same day, the parties also closed escrow on the LoanCore Loan refinancing. (Ex. 308.) The refinancing Escrow Closing Statement showed two separate wire transfers from Continuum to the escrow holder: one in the amount of \$20 million and one in the amount of \$10 million. (*Id.*)

The Operating Agreements are substantially similar and the pertinent provisions include:⁷

(1) The parties to the MOM CA JV Operating Agreement are the MOM CA Manager as the Managing Manager, the MOM CA Member as the MOM Member, and Honarkar as the MO Member and the Administrative Manager.⁸ (Ex. 315 at 6; §§ 9.1, 9.2, 9.3.) Honarkar signed for himself. Shyam signed as the Manager of the MOM CA Manager on behalf of both the MOM CA Manager and the MOM CA Member. (Ex. 315 at 38.)⁹

(2) The MOM CA JV Operating Agreement obligated the MOM CA Member to make a \$30 million “Contribution” to be used “for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B...” (Ex. 315 at § 6.1(c) [“Initial Contributions”].) Exhibit B in turn stated, “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (*Id.* at Ex. B [Disbursement of Contribution for Hotel Laguna Project].) “Contribution” was defined as “money or property, or a promissory note or other binding obligation to contribute money or property” that a “Member contributes ... as capital.” (*Id.* at § 1.19.) But loans by the MOM CA Member “shall not be considered Contributions for purposes of this Agreement.” (*Id.* at § 6.5.)

(3) The Operating Agreements required Honarkar to contribute certain LLCs he and 4G owned or controlled, defined as either “Subsidiaries/Other Owned LLCs” or “Projects.” (Ex. 315 at §§ 1.40, 1.48, 1.45, 6.1(a), Ex. C.) For the MOM CA JV, the only identified “Project” was the Hotel Laguna Project. (*Id.* at § 1.45.) Each of the other listed entities was a “Subsidiary/Other Owned LLC.” (*Id.* at Exs. C, D.) Makhijani and Continuum through the MOM Member had the discretion to make a capital contribution to a “Subsidiary/Other Owned LLC” property and convert it to a “Project” under the Operating Agreement. (*Id.* at § 6.1.)

(4) The Managing Member was not entitled to sell the assets of or ownership interests in the “Subsidiary/Other Owned LLCs” absent Honarkar’s prior written consent, unless Honarkar was in default, as defined. (Ex. 315 at §§ 9.3(b), 1.36.)

(5) Self-dealing transactions were prohibited without the written consent of both the Managing Manager and the Administrative Manager. (Ex. 315 at § 9.15.)

⁷ The Arbitrator will use the MOM CA JV Operating Agreement as the reference agreement. (Ex. 315.) The material terms of the MOM AS JV and MOM BS JV Operating Agreements are substantially similar.

⁸ On July 14, 2022, the parties executed a Letter Agreement (the “Letter Agreement”) amending the Operating Agreements to clarify that 4G was the MO Member of the MOM JV Entities, not Honarkar personally. (Ex. 583 at § 3 [“It was intended for 4G and not [Honarkar] to be the MO Member of the Companies. Accordingly, the Salient Documents shall be deemed amended so that the MO Member is 4G without any further action by the parties”].)

⁹ Similarly, Banayotis Haddad, a Continuum employee, signed the MOM AS JV Operating Agreement as the Manager of the MOM AS Manager on behalf of both the MOM AS Manager and the MOM AS Member. (Ex. 313 at 39.) And Jason Miller signed the MOM BS JV Operating Agreement as the Manager of the MOM BS Manager on behalf of the MOM BS Manager and the MOM BS Member. (Ex. 314 at 38.)

(6) The Managing Manager was required to keep “full and accurate books and records” for the MOM JV Entities, reflecting “all of the income, expenses and transactions.” (Ex. 315 at § 12.1.) The Managing Manager was also required to provide monthly and annual financial reports, including balance sheets, profit and loss statements, and tax returns. (*Id.* at § 12.2.)

That same day, Honarkar and the MOM Managers also executed the ACA, restructuring and contributing Honarkar’s and 4G’s membership interests in the Other Owned LLCs to the MOM JV Entities. (Ex. 304 at § 2.) The ACA specified certain entities (the “Held-Back LLCs”) were not subject to restructuring or contribution by Honarkar. (*Id.* at Ex. E.) But according to Honarkar, the Operating Agreements mistakenly list multiple properties as Other Owned LLCs.¹⁰ (*E.g.*, Exs. 304, 315 at 43 [listing 4G itself and Modan LLC, which is owned by Niazi].¹¹)

Once the Operating Agreements were executed, Continuum assumed control of the MOM JV Entities’ bank accounts, as well as the bank accounts of the Other Owned LLCs. Honarkar continued the day-to-day business operations of the Other Owned LLCs.

Continuum’s Alleged Wrongdoing in Operating the JV

Less than one month after the MOM JV Entities were formed, on or around July 1, 2021, Continuum caused Tesoro Redlands DE LLC (“Tesoro Redlands”), an Other Owned LLC,¹² to obtain a \$1 million loan (the “Tesoro Loan”) from Nano. (Exs. 403, 409, 411.) That same day, one of the MOM investors, Enrico Arvielo, was repaid his \$3 million investment in one of the MOM Members. (Ex. 405.) The Tesoro Loan was secured by a deed of trust encumbering real property owned by Tesoro Redlands, which was not recorded until March 2022. (*Id.*) When Honarkar’s staff received a monthly billing statement for the Tesoro Loan on September 23, 2021, an employee of Nano indicated it was “a billing error and not applicable to Tesoro.” (Ex. 2723.) Honarkar was not involved in or aware of the Tesoro Loan. (Ex. 488 [Tesoro Loan not included in list of JV loans sent to Honarkar in Dec. 2021]; 6.27 Tr. at 960:14-961:7.)

¹⁰ Notably, in September 2022 Kluchin sent a list of the “Contributed Entities” to an outside accounting firm to prepare the MOM JV Entities’ 2021 tax returns, but he did not include 4G, Modan LLC, BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing82 LLC, or Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

¹¹ 6.24 Tr. at 130:10-17; 7.5 Tr. at 2469:16-2470:1; Ex. 622 [Kluchin email to Nano – “Modan LLC account has nothing to do with Continuum or 4G. This account belongs only to Dan Niazi”].

¹² Tesoro Redlands is owned by Tesoro Redlands LLC, an Other Owned LLC/Subsidiary of the MOM JV Entities. (Ex. 279 at 2; Ex. 315 at 43.)

In early 2022, Honarkar proposed a sale of Tesoro Redlands, intending to use the proceeds to pay off debts owed to Makhijani/Continuum and other obligations. (Exs. 527, 533.) Makhijani refused to consent to the sale and instead refinanced the Tesoro Loan with Preferred Bank. (Exs. 530, 531, 533.) Though Honarkar ultimately consented to the Preferred Bank refinancing on February 25, 2022, conditioned upon his ability to sell the property after the refinance, Makhijani and Shyam (on behalf of the MOM CA Manager and MOM CA Member) set up the refinance and signed the relevant documents on February 22, 2022, prior to Honarkar's consent. (Exs. 529, 531, 533, 535.) Honarkar testified he was not informed where the refinance proceeds went and did not receive documentation relating to the refinance until over six months later. (Ex. 602 [email from Taxman on September 27, 2022 – "Mo has zero idea as to the amount of the refinance proceeds, the terms of the refinance loan and the use of the proceeds"].)

The evidence shows that when the Tesoro Redlands refinance with Preferred Bank closed on February 24, 2022, only some of the \$39 million in proceeds were used to pay off existing debt. (Ex. 530.) Approximately \$8.8 million was listed as a cash-out to the borrower, and \$8.8 million was transferred directly into the Continuum bank account from the Tesoro Redlands bank account on March 1, 2022. (Ex. 541.) In addition, \$2.8 million was held back by escrow and four months later transferred from the Tesoro Redlands bank account to the Continuum bank account. (Ex. 2894; 7.2 Tr. at 1528:5-1531:19.) It is unclear why these funds were transferred to Continuum or for what purpose they were ultimately used.

On April 10, 2022, the MOM Respondents sold a tenant-in-common (TIC) interest in Hotel Laguna, LLC for \$1 million to Jaachak LLC ("Jaachak"), an entity owned and controlled by Continuum executive Jaspreet Singh Sethi. (Exs. 546, 549, 817; 6.27 Tr. at 983:19-990:17.) The TIC sale was consummated without using an escrow. Marc Cohen's client trust account was used instead because the trust company would not wire the sale proceeds to Continuum, which was not a party to the transaction. (Ex. 555 at 3-4; Ex. 558.) Upon receipt, Cohen sent the proceeds to Continuum. (Ex. 558; 7.5 Tr. at 2273:3-2280:14.) Both Honarkar and Niazi testified they were unaware of this transaction and did not receive any proceeds from it. In fact, the proceeds of the sale went directly to the MOM Members. (7.2 Tr. at 1766:6-1767:20 [Makhijani testimony that \$1 million in TIC proceeds became Jaachak's capital contribution to a MOM Member].)

According to Honarkar and his attorney, Taxman, lack of transparency was a common theme in dealing with the MOM Respondents. Even when Honarkar and his team requested information, it seemed the complete financial picture was rarely provided. Taxman testified "[e]very time we met, we asked for information; we asked for financials. It was promised; it was never given. It was – you felt like Charlie Brown trying to kick the ball and Lucy pulling it up." (Tr. 7.5 at 2334:4-19.)

Also, Kluchin directed Nano to establish bank accounts for the LLCs contributed to the MOM JV Entities and to restrict access to Honarkar and his team. On October 29, 2021, Kluchin directed Nano to “set up a new The Masters Building, LLC [account]. Signers are [Shyam] and me. No one from 4G should be on this account. This is very important. [Honarkar], Chi Lu [4G’s Controller] – no one. Only [Shyam] and I.... Again no one from 4G should see or be on this account.” (Ex. 473; Ex. 590 [September 2022 email from Kluchin to Nano – “Note DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread”].)

Honarkar’s Alleged Discovery of the Nano Loan

The Nano Loan closed and funded on June 7, 2021, one day prior to the effective date of the Operating Agreements and thus one day prior to the formation of the MOM JV Entities, and on that date all of the JV properties and subsidiary LLCs were still wholly owned by Claimants. The \$20 million Nano Loan proceeds were deposited in a Continuum bank account and then transferred to escrow that same day. (Ex. 240 [Memorandum to Nano Loan Committee - “proceeds will need to be funded into a related DDA account (not owned by the Borrower) held at the Banc, Continuum Analytics...Nano Banc CCO, ... Gressak, has spoken with the Borrower and has approved the funding of the account”]; Ex. 308 [June 8, 2021 escrow statement with two separate Continuum payments in the amount of \$10 million and \$20 million].)

In early 2023, Honarkar began exploring options to exit the JV. In seeking alternative financing, on February 9, 2023, Honarkar discovered a deed of trust on one of the MOM JV Entities’ properties, dated June 7, 2021, and securing the \$20 million Nano Loan. (Ex. 656.) According to Honarkar, once he received the deed of trust, he ran title searches on the other properties in the MOM JV Entities. He then discovered the \$30 million initial contribution the MOM Members were obligated to make under the Operating Agreements had been funded in part by the \$20 million Nano Loan obtained in the name of the MOM JV Entities themselves; and further, that the Nano Loan was secured by assignments of the MOM JV Entities membership interests in the four subsidiary LLCs,¹³ and by deeds of trust encumbering properties owned by these subsidiary LLCs.¹⁴ (Ex. 239 at 78-82, 88-127; Exs. 234, 235, 236.)

On February 20, 2023, Honarkar sent a letter to Makhijani and Continuum, raising his concerns about several recorded instruments discovered as a result of the title searches, including deeds of trust relating to the Nano Loan, the Tesoro Loan, and loans from the Cantor Group V, and memoranda related to TIC transactions. (Ex. 659.) According to Honarkar, he received no response or further information pertaining to the issues raised in this letter.

¹³ These are 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC.

¹⁴ In these respects, the structure of the Nano Loan was similar to the structure of the loans from the other three lenders who participated in the LoanCore refinance (First Choice, Preferred, and Lone Oak).

On March 22, 2023, Honarkar’s then-counsel (Latham & Watkins LLP) sent a formal books and records demand for each of the MOM JV Entities, seeking basic financial and transactional documents pursuant to the Operating Agreements. (Exs. 661-663.) On April 3, 2023, Respondents indicated they would provide documentation related to the \$20 million Nano Loan only if Honarkar provided “a letter withdrawing the inspection demands.” (Ex. 5480.) Honarkar refused. And, on April 27, 2023, Honarkar filed a Petition to Compel Books and Records in Los Angeles Superior Court, which Respondents opposed. (Ex. 1377.) Ultimately, on November 9, 2023, Judge James C. Chalfant granted Honarkar’s Petition. (*Id.*)

Honarkar’s Demand for Arbitration

On April 25, 2023, Honarkar filed his original Demand and Statement of Claim in this arbitration, seeking the rescission of the Operating Agreements or, in the alternative, the appointment of a receiver over the MOM JV Entities, along with compensatory and punitive damages, a declaratory judgment regarding the Other Owned LLCs, and an injunction reinstating Honarkar as the Administrative Manager to protect his ownership interests.

The MOM Respondents’ Alleged Retaliation Against Honarkar

Almost immediately following Honarkar’s demand for books and records, on March 29, 2023, Makhijani, Continuum, and the MOM Parties utilized their power as Managing Managers and terminated Honarkar as the Administrative Manager of the MOM JV Entities. (Exs. 669-671, 3018.) The letters terminating Honarkar were drafted and sent by Marc Cohen, Esq., current counsel for Makhijani and Continuum in this arbitration. (*Id.*)

Two days later, a group of armed individuals working on behalf of Continuum and Makhijani entered and took control of numerous JV properties, including the Hotel Laguna, a Holiday Inn Hotel in Laguna Beach, and several other vacation rentals. (Exs. 681, 1196, 1198.)

In early May 2023, Honarkar returned to the Hotel Laguna, and there was a confrontation between Makhijani, Kluchin, and the MOM Respondents’ agents. (Ex. 1165 [video of portion of incident, Makhijani stating “I’ll put 32 fucking guards here”]; Ex. 1160 [video of portion of incident].) Each side blames the other, but the only person arrested that day was Banayotis Haddad, a Continuum employee and the Manager of MOM AS Manager, who was charged with assault. (Ex. 1305; 6.24 Tr. at 202:3-21; 7.2 Tr. at 1800:4-9.)

Both Honarkar and Kluchin also testified that, during the night of June 30, 2023 and the early morning of July 1, 2023, a group of armed individuals and other agents working on behalf of Continuum and Makhijani entered and took physical control of Terra (a restaurant located at the Laguna Festival of the Arts and operated by Honarkar for years).

On the afternoon of July 24, 2023, while Honarkar and the MOM Respondents were appearing before Orange County Superior Court Judge David J. Hesseltine arguing motions for injunctive relief, Kluchin, Haddad, and Jason Miller, along with more than a dozen men dressed in black broke into the 4G corporate headquarters, where both 4G and Honarkar maintained offices, while Honarkar's team was working. (Ex. 773 [police report].) A glass door located on the side of the building was shattered with a hammer to gain entry and the double doors at the front entrance were forced open. (*Id.* at 4; Ex. 1212.) Kluchin admitted he and his team broke into the offices. Video of the incident appears to show the MOM Respondents' agents removing documents, banker's boxes of hardcopy files labelled "LEGAL," computer equipment, and other objects from the office, including employees' personal effects. (Ex. 1158.)

On July 29, 2023, the MOM Respondents served eviction notices on Honarkar and both of his daughters at their residences, which were JV properties under the Operating Agreements. (Ex. 772 at 4-8.) In addition, Respondents initiated multiple eviction proceedings against tenants leasing other JV properties. According to Kluchin, these eviction notices and proceedings were instituted against those tenants for not paying rent directly to the MOM Respondents.

Also, during this time, the MOM Respondents hired mobile billboards to drive around Laguna Beach, displaying pictures of Honarkar with disparaging messages. One of the billboards included photos of police officer Jessie Schmidt (one of the officers present at the scene of the 4G offices break-in) and Shohreh Dupuis (city manager for the City of Laguna Beach), along with Honarkar's photo and the word "CORRUPTION??" in large bold capital letters. (Ex. 11506.27 Tr. [Kluchin testimony – "Our PR consultant worked on this [billboard] and suggested it, and we approved it because we believe it to be true"].) According to the MOM Respondents' testimony, they included Schmidt and Dupuis on the billboard because they felt Dupuis was "allow[ing] Mo [Honarkar] to get away with a lot [of] things that he probably shouldn't have" (Kluchin, 6.27 Tr. at 1049:6-9) and the police were "not protecting our rights to manage the property" (Makhijani, 7.2 Tr. at 1811:2-21).

Additional facts are set out in the analysis and discussion that follows.

III. ANALYSIS

The fraud and other non-contractual claims are governed by California law. The claims for breach of the Operating Agreements are governed by Delaware law. (*e.g.*, Ex. 315 at § 19.1.) The claim for breach of the Management Agreement is governed by California law. (Ex. 37 at § 13.4.) The parties bear the burden of proof on their respective claims and defenses by a preponderance of the evidence, except for the punitive damages claim, which requires clear and convincing evidence. (Civ. Code § 3294.) The JAMS Comprehensive Arbitration Rules apply.

A. Claimants' Direct Fraudulent Inducement Claim Against Makhijani, Continuum and the MOM Members (FAC at 22-23)

Claimants allege they were fraudulently induced by Makhijani, Continuum and the MOM Members into signing the Operating Agreements by the MOM Respondents' promise to make a \$30 million initial contribution. They assert the MOM Respondents had no intent to perform the promise when they made it, and it was not performed.

The MOM Respondents argue the promise was performed because the Operating Agreements allowed them to use the \$20 million Nano Loan to fund part of the \$30 million initial contribution obligation.¹⁵ They also insist Honarkar was informed about the Nano Loan and about commitments the MOM Members made to pay off the Nano Loan.

"Promissory fraud [aka fraudulent inducement] is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973.)¹⁶ "[P]romissory fraud requires proof of (1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promisee." (*Gruber v. Gruber* (2020) 48 Cal. App. 5th 529, 540.)

1. Initial Contribution Promise

It is undisputed the MOM Members promised to make the \$30 million initial contribution to the MOM JV Entities. (Ex. 315, § 6.1 [MOM CA Operating Agreement]; Ex. 148 at 2 [Term Sheet].) The required *form* of the initial contribution is the crux of this dispute. The Arbitrator's analysis will begin with the plain, unambiguous language of the Operating Agreements.

Recall the term "Contribution" is defined generally in the Operating Agreements as "any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement." (Ex. 315, § 1.19.) That defined term is used in connection with both Initial Contributions and Additional Contributions (compare Ex. 315, §§ 6.1 and 6.2) and throughout the Operating Agreements.

¹⁵ Continuum also deposited \$10 million in escrow but \$3.9 million of that was immediately refunded. (Ex. 308.)

¹⁶ For simplicity internal citations and quotation marks have been omitted from case quotations throughout.

The MOM CA JV Operating Agreement specifically states: “6.1 Initial Contributions. ... [¶] (c) Concurrently with execution hereof, by all of the Members, the MOM [CA] Member shall make a Contribution of \$30 million to the Company for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B attached hereto.” (Ex. 315, § 6.1(c).) Exhibit B, titled “Disbursement of Contribution for Hotel Laguna Project,” states it shall be used to: “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (Ex. 315 at Ex. B.)

Reading these sections together reveals the term “Contribution,” defined generally in Section 1.19, is also subject to the specific requirements of Section 6.1. (*Kirkwood Knoll Maint. Corp. v. Warren* (Del. Com. Pls. Apr. 21, 2016) C.A. No. CPU4-14-003607, 2017 WL 8999315 at *5.) Thus, the MOM Member’s \$30 million *initial* Contribution had to be made June 8, 2021 (upon execution) in a form that could be disbursed to fund shortfalls in the LoanCore Loan refinance that same day. There is no other way to give meaning to both sections as required.

And the Nano Loan transaction itself did not satisfy the initial contribution obligation.

As a threshold matter, it appears the Nano Loan transaction was unauthorized and the Nano Loan documents are therefore invalid. This is true because on the day the Nano Loan closed and funded, June 7, 2021: (a) the putative Nano Loan borrowers – the MOM JV Entities – did not yet exist; (b) the Term Sheet was still in effect; (c) the JV properties and the membership interests in the subsidiary LLCs that owned them still belonged to Claimants; and (d) neither the MOM Managers, nor any other MOM Respondents, including Continuum, had any authority to encumber those properties or to assign those membership interests.

Even if the Nano Loan transaction was authorized and the Nano Loan documents are valid, the Nano Loan itself was not a “Contribution” by the “MOM CA Member” (MOM CA Investor Group LLC) to the “Company” (MOM CA Investco LLC) “as capital in that Member’s capacity as a Member pursuant to this [Operating] Agreement.” (Ex. 315, §§ 1.19, 6.1.) In fact, the MOM CA Member was not even a party to the Nano Loan transaction. Besides, nothing in either the Term Sheet or the Operating Agreements authorized the MOM Members to make the initial contribution in the form of a loan from Nano to the MOM JV Entities secured by their own assets. In short, Makhijani and Continuum used Claimants’ assets to secure the Nano Loan, and used the Nano Loan proceeds to acquire an interest in and gain control of those same assets.

Perhaps recognizing the Nano Loan transaction itself did not satisfy the initial contribution obligation, the MOM Respondents argue it was satisfied because they made a binding oral promise the MOM Members (not the MOM JV Entities) would pay the Nano Loan; and that the oral promise was memorialized in a “Contribution Agreement” (Ex. 2433.) The substance of the promise was the MOM Members would “step in and pay” the Nano Loan upon “the earlier of the Maturity Date or any date on which [Nano] demands” payment. (*Id.* at 1.)

If the oral promise was made and if the Contribution Agreement is genuine, neither satisfied the initial contribution obligation, because neither obligated the MOM Members to make any payment on June 8, 2021. And any payment made or to be made after that date could not be used to fund shortfalls in the refinance of the LoanCore debt on that date.¹⁷ What's more, the MOM JV Entities still owed Nano \$20 million and the Nano Loan was still secured by the Nano Loan trust deeds and assignments of subsidiary LLC membership interests. So, the MOM JV entities were still at risk of losing their assets if the MOM Members failed to pay.

In any event, there is substantial reason to doubt the oral promise was made and the Contribution Agreement is genuine.

The MOM Respondents maintain the oral promise to pay the Nano Loan was made at in-person meetings with Honarkar before the JV was formed. Specifically, they note: Makhijani testified he informed Honarkar of this commitment (7.2 Tr. at 1897:3-1899:12; 7.3 Tr. 2018:24-2021:22); Kluchin testified it was explained to Honarkar during a meeting at the Corona del Mar restaurant (the "CdM Meeting") that flexibility was needed and that it would be the MOM Members' "binding obligation and promise to pay the loan" (6.28 Tr. at 1205:18 – 1507:7); Gressak testified "part of those discussions [at the CdM Meeting] was talking about how the MOM investors – with this [Nano] loan, and it would pay for the loan" (7.8 Tr. at 2548:13-16); Prendergast, a Nano employee, testified Honarkar was informed at the CdM Meeting the contribution would be made either in cash or through a loan (7.12 Tr. at 3714:14 – 3715:24.1); Prendergast testified about another meeting at the Montage (the "Montage Meeting"), where Honarkar was informed of the Nano Loan and that it would be used to refinance the LoanCore obligation (7.12 Tr. at 3716:16 – 3719:17); and finally, Kluchin and Gressak both testified there was also a meeting at Honarkar's house on June 6, 2021 where the matter was discussed. (7.3 Tr. at 2018:24-2021:22; 6.27 Tr. at 1057:12-1059:4; 7.8 at 2550:18-2552:21.)

But the testimony about these meetings and the oral promise was not credible. Regarding the CDM Meeting, the witnesses contradicted each other in parts. For example, Makhijani, Kluchin, and Gressak insisted Makhijani drew a diagram of the Nano Loan on a napkin and described it to Honarkar. But Prendergast remembered only that the diagram related to dilution of the MOM Members' capital percentages, an issue unrelated to the oral promise or the initial contribution. (7.12 Tr. at 3805:4-3808:12.) As for the Montage Meeting, no witness other than Prendergast even mentioned it. Plus, as the Arbitrator observed several times during the Hearing, based on basic witness credibility considerations, Kluchin, Makhijani, and Gressak were just not credible. (CACI 107 [Witness Credibility]; 7.1 Tr. at 1572:15-19 [re Kluchin]; 7.8 Tr. at 2506:3-2507:22 [re Kluchin and Makhijani]; 7.8 Tr. at 2773:8-13 [re Gressak].)

¹⁷ For these same reasons, the Arbitrator rejects the MOM Respondents' claim additional funds they "infused" into the JV after June 8, 2021, satisfied the initial contribution obligation. Besides, there is insufficient evidence in the record establishing the form or amount of these infusions, by whom they were made, or where funds came from.

These credibility findings about the oral promise testimony are buttressed by the Respondents' pre-hearing verified discovery responses and deposition testimony. The initial interrogatory responses of Makhijani, Continuum, and Nano made only general statements that Honarkar was aware of the Nano Loan "through conversations with Responding Parties and Nano Banc." (Ex. 950 at 004-005; Exs. 937 at 007, 949 at 007.) They made no mention of any specific conversations where the Nano Loan was disclosed to Honarkar. Later, Nano's PMK deposition witness testified he was not aware of any written or oral communications with Honarkar about the Nano Loan. (Ex. 1000 at 93:21-94:11.) Still later, Makhijani made no mention of the CdM Meeting in his PMK deposition for Continuum. (Ex. 1009 at 39:25-40:10.) Then, less than a week before the Hearing, Nano's second supplemental interrogatory responses mentioned the CdM Meeting and the napkin diagram for the first time. (Ex. 1527.)

These credibility findings are also supported by the fact that there is no evidence of any written communications to Honarkar or his team at any time discussing the oral promise, nor are there any internal written communications between Honarkar and his team about the oral promise. Finally, Honarkar, Niazi, and Taxman all testified they were not aware of the Nano Loan until 2023. (6.24 Tr. at 169:22-178:14, 247:23-248:4 (Honarkar); 7.5 Tr. at 2301:4-2302:1 (Taxman), 2481:24-2483:14 (Niazi); 7.8 Tr. at 2526:5-2528:12 (Niazi); Exs. 656, 664, 659-63.)

In total, the weight of the evidence supports finding the oral promise was not made.

Turning to the Contribution Agreement, Kluchin testified he drafted it in "the morning of June 7, 2021." (6.28 Tr. at 1208:14-21, 1208:14-1209:7; 7.1 Tr. at 1544:13-1547:21.) He also testified it "was printed out, so it was signed in the office," "on June 7th" and was "signed in person and then scanned" the same day. (7.1 Tr. at 1544:13-16, 1548:18-1550:25.) Makhijani testified it was signed "mid-morning time on June 7" and that it was signed either using "a pen or a stamp." (7.2 Tr. at 1699:22-1701:25; 7.1 Tr. at 1548:22-1551:9.) But their testimony about the existence, creation, and execution of the Contribution Agreement is not credible.

There is no contemporaneous evidence the Contribution Agreement existed as of June 7, 2021. There are no written communications (emails, texts, or memoranda) about it. (7.1 Tr. at 1544:13-16, 1554:15-1557:7.) The MOM Respondents admit they never shared it with Honarkar or Nano. (6.28 Tr. at 1208:14-1210:15; 7.1 Tr. at 1544:13-1554:22; 6.24 Tr. at 254:23-255:22.) And they did not assert it existed until July 2023, months after the litigation began.

At the Hearing, when Claimants proffered a handwriting expert to testify the signatures on the Contribution Agreement were placed by electronic means, not by pen or stamp (7.7.24 Joint Letter), the MOM Respondents stipulated, contrary to Kluchin and Makhijani's testimony about it being printed, signed, and scanned on June 7, 2021, "the signatures on the Contribution Agreement were placed onto the document by electronic means." (7.12.24 Stipulation.)

The text of the Contribution Agreement also suggests it could not have existed and been signed in the mid-morning of June 7, as Kluchin and Makhijani testified, because Paragraph 2 refers to the final Operating Agreement's definition of Contribution in "Section 1.19." But on the morning of June 7, the draft Operating Agreements had the definition of "Contribution" in section 1.20—not section 1.19. (Ex. 1505 at 001, 023 [draft circulated at 12:58 p.m. on 6.7.21]; 7.10 Tr. at 3261:13-3263:5 [Gartside testified Exhibit 1505 was then-current draft].) Moreover, the definition of Contribution was not moved to section 1.19, until subsequent drafts exchanged later in the evening of June 7. (Exs. 282, 315 at 009, 313 at 009, 314 at 009.) The MOM Respondents' explanation for all of this is based on speculation, not evidence.

Even if the Contribution Agreement was authentic, it was invalid. Claimants argue it violated the Affiliate Transaction restrictions under the Operating Agreements. (Ex. 315 at 027.) Perhaps. The Mom Respondents contend the Affiliate Transaction restrictions do not apply because the June 7 Contribution Agreement predates the June 8 Operating Agreements. But again, on June 7: (a) the MOM JV Entities – who are putative parties to and beneficiaries of the Contribution Agreement - did not exist; (b) the Term Sheet was still in effect; and (c) the Contribution Agreement promise was not "cash equity" as required by the Term Sheet.

All told, the Contribution Agreement did not satisfy the initial contribution obligation.

To the extent the MOM Respondents downplay the materiality of the initial contribution to Honarkar and his decision to enter into the JV, their position is untenable. At the outset, it was intended to immediately pay off the \$17.5 million debt to Honarkar's ex-wife and then fund the Hotel Laguna Project. When Continuum was unable to secure enough financing to pay off LoanCore, the initial contribution was also to be used to "close the gap" in the refinance. As the MOM Respondents recognized: "The cash needs of the contributed businesses were staggering at the outset of the joint venture, particularly given the financial troubles faced by Honarkar through his divorce, the subsequent foreclosure action brought by DIG, and the multiple receivers imposed over Honarkar's assets." (MOM Respondents' Opposition brief at 36.)

For these reasons, Claimants proved the first element of their fraud claim.

2. Intent Not to Perform

Claimants argue the MOM Respondents never intended to make the initial contribution from their own pockets, but instead planned to saddle the MOM JV Entities with debt in order to fund the initial contribution obligation. Again, "[a] promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Engalla, supra*, 15 Cal. 4th at 973.) And parol evidence is admissible to establish fraud. (Code Civ. Proc. ("CCP") § 1856(g).)

The evidence surrounding the JV negotiations is particularly instructive on this issue. While negotiating the Term Sheet, the drafts proposed by Continuum defined the form of the initial contribution as “debt with equity warrants and/or equity,” whereas Honarkar’s team repeatedly struck any reference to debt and inserted the term “cash.” (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17.) Obviously, Honarkar had no intention of allowing the MOM Respondents to saddle the JV Entities with debt to help fund the initial contribution. Eventually, the parties settled on the term “cash equity,” suggesting the MOM Respondents intended to mollify Honarkar by including the word “cash” but intending to use the Nano Loan proceeds anyway.¹⁸

That the Nano Loan closed and the proceeds were taken by Continuum the day before the Operating Agreements were finalized and executed, also suggests the MOM Respondents fully understood their promise to provide the initial contribution was false when made. Even more telling, on May 20, 2021, four days before the Term Sheet was signed and two weeks before the Operating Agreements were signed, Shyam signed the Nano Loan LOI, with the then-theoretical MOM JV Entities as the borrowers and Claimants’ assets as the collateral. (Ex. 130.) According to Kluchin, this loan idea was always Continuum’s plan. (6.27 Tr. at 850:17-852.11.)

These facts prove the MOM Respondents had no intention of providing the initial capital contribution without borrowing \$20 million of it from Nano using Claimants’ assets.

3. Intent to Deceive and Induce Reliance

Claimants argue the MOM Respondents’ intent to deceive Honarkar as to the form of the contribution is evidenced by their active concealment of the Nano Loan. “A fraudulent state of mind includes not only knowledge of falsity of the misrepresentation but also an intent to induce reliance on it.” (*Engalla, supra*, 15 Cal. 4th at 976.)

When the Nano Loan funded on June 7, 2021, Continuum requested that the proceeds be sent directly to a Continuum bank account at Nano “until the escrow company indicates that they will be ready to receive funds.” (Exs. 237, 240.) Because it was unusual to transfer the loan proceeds to any entity other than the borrower, Nano employee Brian Buchanan drafted a memorandum requesting permission from the Nano Loan Committee, which stated Gressak had “spoken with the Borrower and [] approved the funding of the account.” (Ex. 240.) And when the escrow closed on June 8, 2021, the escrow closing statement showed two transfers from Continuum – one for \$10 million and one for \$20 million. (Ex. 308.)

¹⁸ The MOM Respondents fail to explain how “cash equity” differs from “cash” or how a debt could be considered a “contribution.” (See, 6.26 Tr. at 806:5-7 [Kluchin cash equity “wouldn’t be a loan that has to convert to equity”].) And in the financial and real estate industries, the term “cash equity” is commonly used to describe the portion of an investment that can be easily converted into cash. See, <https://www.investopedia.com/terms/c/cash-equity.asp>.

The MOM Respondents offer two explanations for these unusual transfers. First, they argue there were concerns the escrow would be delayed if the money came from the MOM JV Entities as borrowers on the Nano Loan, because the MOM JV Entities were not parties to the LoanCore payoff in the escrow holder's files (a problem created by the MOM Respondents in the first instance). Second, they posit the Nano Loan proceeds were initially transferred to Continuum because they were being submitted as the MOM Members' contribution and, as such, should be received through the MOM Members' agent, Continuum.

But these explanations are not consistent with the reason provided to Nano at the time the Nano Loan funded – that the escrow holder was not ready to receive the funds. (Ex. 240.) Nor are they consistent with Kluchin's testimony that the funds were transferred to a Continuum bank account because the MOM JV Entities did not have their own bank accounts set up. (6.27 Tr. at 868:15-871:4.) Regardless of the actual reason for Continuum's receipt of the Nano Loan proceeds, the escrow statement offered no further explanation. It certainly did not disclose that the \$20 million deposit was from the proceeds of the Nano Loan to the MOM JV Entities. And there is no evidence that Respondents conveyed any of these reasons to Honarkar or his team.

Aside from Nano, three other lenders participated in the LoanCore refinance – First Choice Bank, Lone Oak, and Preferred Bank. (Exs. 220-222.) On June 4, 2021, just days before the close of escrow, Kluchin sent copies of the loan documents for each of those three lenders to Honarkar and Taxman. (*Id.*) He did not send over copies of the loan documents for the Nano Loan, despite admitting he had them available. (6.27 Tr. at 886:5-889:12.) Kluchin also sent an email chain on June 6, 2021 to Honarkar and the escrow company, indicating there were only three lenders involved in the refinance. (Ex. 229 at 2.) Neither the body of the email nor the attachment mentions the Nano Loan. (Ex. 229.) And, when Honarkar requested a list of all outstanding loans on the MOM JV Entities' assets in December 2021, the MOM Respondents sent a list from which the Nano Loan was conspicuously absent.¹⁹ (Ex. 716 at 3, ¶ 8; 22-24.)

Nano did not record the Nano Loan deeds of trust encumbering the MOM JV Entities' properties until March 2022. (Exs. 234, 235, 236.) The recording was initiated by Marc Cohen, acting as counsel for Nano, on January 18, 2022 (Ex. 515), the same day Nano received an Order to Cease and Desist from the Federal Deposit Insurance Corporation.²⁰ (Ex. 514.) Thus, the weight of the evidence suggests the MOM Respondents were hiding and intentionally omitting information about the Nano Loan in their communications with Honarkar.

¹⁹ This list also did not include the \$1 million Tesoro Loan from Nano to Tesoro Redlands in July 2021.

²⁰ The order required Nano to engage an independent third party to review extensions of credit to insiders, remediate extensions made "on preferential terms or presenting more than the normal risk of repayment or other unfavorable features," and submit new procedures to "strengthen the Bank's internal controls related to financial transactions between the Bank and senior executives, directors, and/or any entities which they control." (Ex. 514, ¶¶ 5-8.)

Still, the MOM Respondents insist Honarkar and his team were aware of the Nano Loan based on a flurry of due diligence emails from Nano during the JV negotiations, as well as oral communications with Honarkar. As to the Nano emails, context matters. During the JV negotiations, on May 19, 2021, Nano provided Honarkar with the LOI for the \$150 million loan from Nano and other “participant banks.” (Ex. 106.) The next day, on May 20, Nano provided Shyam with the \$20 million Nano Loan LOI. (Ex. 130.) Remarkably, both LOI’s list the same Honarkar and 4G properties and subsidiary LLCs as collateral. (Exs. 106 at 1-2; 130 at 2.)

It is not surprising then that Honarkar and his team were receiving emails from Nano seeking due diligence on these properties. (Exs. 115 [May 19 email from Buchanan re underwriting]; 4017 [May 20 emails from Nano employee re certificates of insurance]; 4018-4020 [May 20 response emails from Honarkar’s team attaching requested documents]; 5517 [May 21 email, 4G employee requesting insurance certificates – “[w]e still have the current lender, that has not changed, the bank we are refinancing the loan portfolio with is Nano Banc (who might be syndicating the loan with other lenders). They need the current certificates no matter the lender”]; 5518; 2296.) But none of these emails referenced the Nano Loan or clarified that Nano was underwriting the Nano Loan.²¹ It is reasonable to believe Honarkar and his team assumed Nano was seeking documents for underwriting the \$150 million loan or another outstanding Honarkar loan previously obtained from Nano (Ex. 123.) More importantly, Honarkar’s reaction to discovering one of the recorded Nano Loan trust deeds in 2023 is consistent with his claimed lack of knowledge of the Nano Loan before then. (Exs. 656, 659.)

As for oral communications, again, no credible evidence was presented that the Nano Loan was disclosed to Honarkar during the CdM Meeting, the Montage Meeting, or the June 6 meeting at Honarkar’s house. Rather, the weight of the evidence proves otherwise.

Respondents point to a perceived discrepancy in Honarkar’s testimony, suggesting he was aware \$143 million in secured loans refinanced the LoanCore Loan. (6.25 Tr. at 351:9-14; Ex. 2637 at 2; Ex. 2582 (“144M payout of DiG [for LoanCore Loan refinance] with \$143M of Loan”); Ex. 3934.) Respondents argue this proves Honarkar was aware of the Nano Loan, because \$143 million was the total amount of loans including the \$20 million Nano Loan. This argument is not persuasive. Again, the evidence shows Honarkar was not aware the \$20 million Nano Loan had been obtained, much less that it had been used to fund the MOM Members’ initial Contribution. Plus, Honarkar’s testimony is consistent with Nano and the other participating banks performing under the \$150 million Nano LOI.

²¹ Though Respondents rely heavily on Buchanan’s testimony that Honarkar was fully informed of the Nano Loan, the Arbitrator points out Buchanan was in fact unaware of the \$150 million Nano LOI, despite his signature being on the document. (Ex. 106; 6.26 Tr. at 566:13-567:25.) There were also other LOIs from Nano to Honarkar of which Buchanan was unaware. (6.26 Tr. at 563:11-566:12; 569:22-571:7, 575:19-577:11, 584:20-585:13; 6.28 Tr. at 1118:17-1119:5.) It is likely Buchanan and Honarkar were both focusing on different Nano loans when discussing due diligence, as it seems neither knew the Nano Loan existed.

Moreover, Honarkar had several other Nano loans, in addition to the LoanCore refinance loans, which could explain his conclusion there was a total of \$143 million in loans. (Exs. 29 [Nano credit memo showing prior debts], 5501 [demonstrative]; 6.25 Tr. at 358:7-361:11.)

The MOM Respondents were aware of Honarkar's position that the initial contribution should not be provided in the form of a debt. As explained above, the Nano Loan transaction itself did not satisfy the initial contribution obligation. Yet, the MOM Respondents obtained the Nano Loan, muddled the waters, omitted basic information from their communications with Honarkar that would have informed him of the Nano Loan and, given the timing, conflated due diligence on the \$20 million Nano Loan with the \$150 million Nano LOI and other Nano loans.

If, as the MOM Respondents insist, they informed Honarkar of the Nano Loan and the MOM Members' promise to repay it, they provided no explanation for omitting the form of the initial contribution in their written communications with Honarkar. The evidence supports a finding the MOM Respondents intended to deceive Honarkar with respect to the Nano Loan.

4. Actual and Reasonable Reliance

Claimants must prove both actual and justifiable reliance or reasonable reliance. (*Beckwith v. Dahl* (2012) 205 Cal. App. 4th 1039, 1062-67.) "Actual reliance occurs when a misrepresentation is an immediate cause of a plaintiff's conduct, which alters his legal relations, and when, absent such representation, he would not, in all reasonable probability, have entered into the contract or other transaction." (*Engalla, supra*, 15 Cal. 4th at 976.) "It is not necessary that a plaintiff's reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct. It is enough that the representation has played a substantial part, and so has been a substantial factor in influencing his decision." (*Id.* at 976-77; *Whiteley v. Philip Morris Inc.* (2004) 117 Cal. App. 4th 635, 678 (same).) "Moreover, a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. A misrepresentation is judged to be material if a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." (*Engalla, supra*, 15 Cal. 4th at 977.)

Unquestionably, the \$30 million initial contribution was material to Honarkar and his decision to enter into the JV, given his immediate needs for funds. And the evidence is certain Honarkar would not have agreed the initial contribution could be in the form of debt secured by the JV properties. (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17; 6.24 Tr. at 150:24-151:7 ["That defeats the purpose. You're not putting money, you know; how could you be a partner?"]). The exclusivity provision in the Term Sheet also limited Honarkar's ability to pursue other options for financing prior to establishing the JV. (Ex. 148 at 8-9.)

So, the evidence shows the representations the MOM Respondents made about their initial contribution substantially influenced Honarkar's decision to enter into the JV and sign the Operating Agreements. (*Hoffman v. 162 N. Wolfe LLC* (2014) 228 Cal. App. 4th 1178, 1193-94 ["Reliance can be proved in a fraudulent omission case by establishing that had the omitted information been disclosed, the plaintiff would have been aware of it and behaved differently"].)

Honarkar must also show his "actual reliance on the representation was justifiable, so that the cause of the damage was the defendant's wrong and not the plaintiff's fault." (*Beckwith*, 205 Cal. App. 4th at 1066.) Justifiable reliance accounts for the particular "circumstances" of the plaintiff. (*Whiteley, supra*, 117 Cal. App. 4th at 684 [weighing, *inter alia*, plaintiff's "lack of sophistication" and "the evidence that she was addicted to cigarettes" in determining whether her reliance on statements about effects of cigarette use was reasonable or justified].)

The MOM Respondents argue Honarkar could not have justifiably relied on their representations because he failed to read the final Operating Agreements before execution. However, whether a plaintiff "read the entire [contract] is not dispositive" of reliance where there is "ample evidence of fraud." (*Orozco v. WPV San Jose, LLC* (2019) 36 Cal. App. 5th 375, 392.) Given the chaos surrounding the negotiation and due diligence processes and the frantic push to get the documents finalized, Honarkar was not provided "reasonable opportunity to know of the character or essential terms of the proposed contract[s]." (*Rosenthal v. Great W. Fin. Sec. Corp.* (1996) 14 Cal. 4th 394, 423; 6.25 Tr. at 336:14-25 ["every five minutes, there was a new version. As soon as you get one, then it kicks in another version"].) He relied on his counsel to assist him with the documents. (6.24 Tr. at 132:1-133:2; 6.25 Tr. at 337:1-19, 322:5-25.) And again, Kluchin pressured Honarkar to sign early, before the Operating Agreements were finalized. (Ex. 288 ["We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap"]; Exs. 347, 352.)

Based on the financial wherewithal and resources available to the MOM Respondents, specifically Makhijani and Continuum, it was reasonable for Honarkar to assume Continuum's investors could and would follow through on their promises to fund the initial contribution. Honarkar was introduced to Makhijani by Gressak at Nano, a bank with which Honarkar already had an existing relationship and a "friend" in Gressak he trusted. (6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) It is also important that many of the Continuum investors were also Nano shareholders and they had access to significant capital. (Ex. 1000 at 181:18-190:12.)

And finally, given the MOM Respondents' intentional concealment of the Nano Loan, there was little Honarkar could have done to discover the initial contribution obligation was going to be made by encumbering the MOM JV Entities assets with debt. (*Whiteley, supra*, 117 Cal. App. 4th at 684 ["Negligence on the part of the plaintiff in failing to discover the falsity of a statement is no defense when the misrepresentation was intentional rather than negligent"].)

Based on the evidence in the record, the Arbitrator finds Claimants actually and justifiably relied on the MOM Respondents' representations.

5. Nonperformance

As discussed (§ III.A.1. above), the MOM Respondents failed to provide the \$30 million capital contribution as required. In addition, the MOM Respondents claimed the monthly payments on the Nano Loan as expenses of MOM JV Entities on at least two occasions (Exs. 574, 604; Exs. 2909, 5500 [Chi Lu, 4G's Controller, questioning payments to Nano]; 6.27 Tr. at 903:18-20, 904:1-4; 7.1 Tr. 1491:7-1492:3.) The MOM Respondents contend these payment entries were made in error and subsequently reversed. (Exs. 2909, 3625.) The Arbitrator rejects these contentions as not supported by the evidence. The MOM Respondents also insist the MOM Members alone have made all the payments on the Nano Loan. (Ex. 5530 at 2; Exs. 3410, 1042.) But the evidence supporting this position is of limited value since, as of July 2022, the MOM Respondents had recorded the Nano Loan on the JV's books and records as a long-term liability of the MOM JV Entities, and have provided no books and records since. (Ex. 507.) The fact remains - the MOM Respondents did not perform the promised capital contribution.

6. Resulting Damage and Alternative Remedies

"To recover for fraud, a plaintiff must prove loss proximately caused by the defendant's tortious conduct." (*Fladeboe v. Am. Isuzu Motors Inc.* (2007) 150 Cal. App. 4th 42, 65.) The MOM Respondents contend Claimants have suffered no cognizable damages, as no MOM JV Entity funds were used to pay the Nano Loan. But again, the evidence shows: (1) the MOM Respondents' misrepresentations in connection with their initial contribution played a substantial part in inducing Honarkar to enter into the JV and (2) the MOM Respondents then encumbered Claimants' properties with the \$20 million Nano Loan, along with hundreds of millions of dollars of additional encumbrances over the course of the JV. (Ex. 967.) These findings alone satisfy Claimants' initial burden to prove the fact that they were damaged by the MOM Respondents' conduct. (See also Exs. 1006 and 1509 [Spindler Reports].) Claimants are not required to prove the specific amount of their damages to perfect this claim, particularly since it would be impossible to quantify them without an accounting of the MOM JV Entities' finances.

For these reasons, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed (§ III.K. below); or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet. (*Chapman v. Skype Inc.* (2013) 220 Cal. App. 4th 217, 234 ["A party alleging that she was fraudulently induced to enter into a contract may either rescind the contract, offer to restore any benefits received, and seek restitution or retain the benefits of the contract and seek damages for fraud"]); Civ. Code § 1692.)

B. Claimants’ Direct Breach of Contract Claims Against the MOM Members and the MOM Managers (FAC at 24-25)

Claimants allege the MOM Parties breached the Operating Agreements and the Management Agreement. (Exs. 313-315, 37.) Each will be discussed in turn.

1. Applicable Law and Elements of Contract Claims

Again, Delaware law applies to the claims for breach of the Operating Agreements (Exs. 313-315, § 19.1.), and California law applies to the claim for breach of the Management Agreement. (Ex. 37, § 13.4.) The elements of a breach of contract claim under Delaware law are substantially similar to those under California law. (Compare *Humanigen, Inc. v. Savant Neglected Diseases, LLC* (Del. Super. Ct. 2020) 238 A.3d 194, 202 with *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal. App. 4th 221, 228.)

2. Breach of Operating Agreements – Failure to Provide Initial Contribution

Claimants assert the MOM Parties breached the Operating Agreements by failing to provide the initial contribution. (Ex. 315, § 6.1.) The Arbitrator agrees for the reasons discussed at length in connection with the fraudulent inducement claim above (§ III.A.1.), and therefore finds Claimants proved this breach of contract claim.²² The Arbitrator further finds this breach was material and it resulted in a failure of consideration. (*Level 4 Yoga, LLC v. CorePower Yoga, LLC*, C.A. No. 2020-0249-JRS, 2022 WL 601862, at *27 (Del. Ch. Mar. 1, 2022) [under Delaware law, “a breach is material if it goes to the root or essence of the agreement between the parties, or touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract”]; *Alchemy LTD LLC v. Fanchise League Co.*, C.A. No. 2021-0476-LWW, 2023 WL 4670954, at *5 (Del. Ch. July 20, 2023) [“Failure of consideration occurs when the bargained-for consideration is not rendered by one of the parties”].)

Hence, as a separate and sufficient basis apart from fraud, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed; or (b) rescission of the Operating Agreements and the Other JV Related Agreements. (*United Engineers & Constructors, Inc. v. Babcock & Wilcox Co.*, C.A. No. 12540, 1993 WL 50309, at *3 (Del. Ch. Feb. 11, 1993) [“The courts of this State, of course, can grant rescission for a number of reasons, e.g., ... failure of consideration”].)

²² The MOM Respondents’ arguments to the contrary based upon the Release Agreement fail because: (i) by its own terms it does not apply to “claims for breach of any operating agreement...” (Ex. 317 at § 1(a)); and (ii) “[a] release obtained through fraud is invalid.” (*Butler Am., LLC v. Aviation Assurance Co.* (2020) 55 Cal. App. 5th 136, 144.)

3. Breach of Operating Agreements – Unauthorized TIC Sale in Property Owned by Laguna HI, LLC

Claimants assert the MOM Parties breached the Operating Agreements by causing Subsidiaries/Other Owned LLCs to engage in transactions, including the sale of TIC interests, without Honarkar’s knowledge or consent. (Exs. 313-315, § 9.3(b) [“Managing Member shall not be entitled to sell the ownership interests in an Other Owned LLC or the asset owned by an Other Owned LLC without the prior written consent of MH...”].) Again, the Arbitrator agrees.

In December 2022, the MOM Managers sold for \$4.1 million a TIC interest in property owned by Laguna HI, LLC, a Subsidiary/Other Owned LLC owned by the MOM JV Entities. (Exs. 315 at 43; 632, 634, 645, 647.) Honarkar was not informed or aware of the transaction. (6.24 Tr. at 180:11-22, 254:12-19; 7.8 Tr. at 2539:20-2540:9.)

The MOM Parties do not dispute the application of Section 9.3 or claim Honarkar was aware of this TIC sale. Instead, they argue Laguna HI, LLC became a “Project” through the First Amendment to the Operating Agreements (the “First Amendment”) on June 30, 2021, such that Honarkar’s consent was unnecessary to sell the TIC interest. (Ex. 689 at 72, § 1(a).) Not so.

The Operating Agreements required the MOM Members to provide notice, make a Contribution, and agree on a development budget, in order to convert a Subsidiary/Other Owned LLC from a “Potential Project” to a “Project.” (Ex. 315, § 6.1(d).) Moreover, while the First Amendment allowed the MOM Members to designate Potential Projects as Projects without further action by the MOM Managers or Members, *i.e.*, without Honarkar’s knowledge or consent, it did not change or remove the notice and contribution requirements of section 6.1(d). (Ex. 689 at 72, § 1(a); Ex. 591 [Sep. 2022 Taxman email, noting there have been no notices or contributions to convert assets to Projects under amended agreements].)

In this way, the Operating Agreements still obligated the MOM Members to seek Honarkar’s consent to recharacterize the asset. (Ex. 315, § 6.1(d).) Interpreting the interplay between the Operating Agreements and the First Amendment in any other way would negate the negotiated balance of power between the parties and lead to an absurd result, allowing the MOM Members to designate all properties as Projects as soon as the First Amendment was signed.

Further, there is no evidence, other than Makhijani’s uncorroborated, self-serving testimony, that the proceeds from the sale of this TIC interest in the MOM JV Entities’ assets were transferred to the MOM JV Entities or distributed to the MOM Members and MO Members as required by the waterfall provisions in the Operating Agreements. (Exs. 313-315, § 8.) Accordingly, the Arbitrator finds the MOM Parties breached the Operating Agreements by selling the TIC interest and that breach resulted in monetary damages to Claimants.

4. Breach of Operating Agreements – Unauthorized Insider/Self-Interested “Affiliate” Transactions With Cantor

Claimants assert the MOM Parties breached the Operating Agreements by entering into “contribution agreements” with the Cantor Group and its related entities (“Cantor”), all of which are affiliates of Shyam. Claimants contend the MOM JV Entities’ assets are heavily encumbered with debt obligations, in part because of loans from Cantor, and they therefore have limited ability to obtain additional financing or liquidity.

The Operating Agreements plainly prohibit, without Honarkar’s prior written approval, “Affiliate” transactions by the MOM Parties; that is, transactions between the MOM JV Entities and the MOM Managers or the MOM Members and entities controlled by or under common control of the Managing Managers or MOM Members. (Exs. 313-315, §§ 9.15, 1.3, 1.17, 1.20.) Cantor is surely an “Affiliate” of the MOM Managers or MOM Members. Cantor consists solely of Shyam; it has no employees and shares the Continuum offices. (7.12 Tr. at 3642:25-3643:8.) Shyam is the founder, CEO, and owner of Continuum and the Managing Member of MOM CA Manager (as well as part of the investor group as a MOM Member). (7.12 Tr. at 3640:17-3641:8.) Kluchin also admitted Cantor was Continuum’s “affiliate” and testified he had explained that to Honarkar. (6.27 Tr. at 1086:4-19; 7.1 Tr. at 1567:24-1570:3.)

The evidence shows the MOM Parties caused the MOM JV Entities and some of the subsidiary LLCs to enter into “contribution agreements” regarding loans from Cantor Group IV LLC and Cantor Group V LLC, both Cantor affiliates. (Ex. 967 at 16-17; 6.27 Tr. at 1009:18-1010:7 [Kluchin testified all Cantor loans have an associated contribution agreement].) Shyam signed these contribution agreements as both the “borrower” and “lender.” (6.27 Tr. at 1002:4-1005:18.) They permit the conversion of the loans made by Cantor into equity in the MOM JV Entities at the option of the MOM Members, if the MOM JV Entities that borrowed the money perform well. (Ex. 469, § 4 [contribution provision].) But if the MOM JV Entities do not perform well, then the MOM Parties can maintain the transaction as a loan, and require the MOM JV Entities to repay Cantor in full, with interest.²³ However, there is no evidence the MOM Respondents ever received written consent from Honarkar, or even informed him of the existence of these loans from the Cantor affiliated entities. (6.27 Tr. at 1008:2-1009:3 [Kluchin – “Q:...[Y]ou did not seek written consent from Mr. Honarkar for the contribution agreements associated with those loans before they were entered, correct? A: Not that I recall”].)

For these reasons, the Arbitrator finds the MOM Parties breached the Operating Agreements by entering into unauthorized Affiliate transactions with Cantor; that breach resulted in monetary damages to Claimants, the amount of which will be determined after the accounting discussed below is completed; and the contribution agreements are likely invalid.

²³ The Arbitrator notes this is a peculiar “heads I win, tails you lose” structure.

5. Breach of Operating Agreements – Failure to Keep and Provide Books and Records for the MOM JV Entities

Claimants assert the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required by section 12.1 which states: “Books of Account. The Managing Manager shall, at the [MOM JV Entities’] sole cost and expense, keep separate, full and accurate books and records of the [MOM JV Entities] wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the [MOM JV Entities] and a list of the names and addresses of the Members.... The Administrative Manager [Honarkar] or a Member [including the MO Member] shall have the right at any time to inspect the [MOM JV Entities] books and records..” (Exs. 313-315, § 12.1.) Claimants contend they have been damaged as a result of these breaches, because they were forced to spend time and resources on needless litigation attempting to obtain these records.

This claim has merit. Both Honarkar and Niazi testified they repeatedly sought financial information from the MOM Respondents and never received it. (6.24 Tr. at 157:22-162:14; 7.8 Tr. at 2525:1-2526:4; Ex. 5480 [MOM Respondents willing to provide financial documents only if Honarkar submits “letter withdrawing inspection demands”].) The MOM Parties admitted they only kept records for the MOM JV Entities for certain periods of time, despite evidence that transactions occurred outside of these time periods. (Exs. 1385 at 3; 967 [loan on 11.15.23].) Certainly, it is unclear where and how records of transactions between the MOM JV Entities and MOM Members were maintained, if at all, particularly since Kluchin testified he had “no information” on why QuickBooks data was not maintained for the MOM JV Entities during certain time periods. (6.27 Tr. at 975:21-981:5.) Finally, the spreadsheet submitted by the MOM Respondents carries minimal weight on this record. (Ex. 3625 [fails to track income into the JV or funds transferred out to Continuum, Makhijani, or other investors].)

For these reasons, though the resulting damages may be nominal, the Arbitrator finds the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required. (*In re P3 Health Grp. Holdings, LLC* (Del. Ch. Oct. 31, 2022) Consol. C.A. No. 2021-0518-JTL, 2022 WL 16548567, at *9 [“A court also can vindicate a breach of contract through an award of nominal damages”].)

6. Breach of Management Agreement – Failure to Pay Management Fee

Claimants assert the MOM Parties breached the separate Management Agreement between Honarkar and 4G, under which Honarkar was supposed to be paid monthly management fees for management services provided to Hotel Laguna, the Holiday Inn Laguna Beach, and several Laguna Beach vacation rental properties. (Ex. 37.) Claimants insist the Management Agreement remains valid because it predates the Operating Agreements.

The Management Agreement claim was not specifically alleged in the FAC and the evidence offered to support it was nominal at best. There is simply not enough in the record to determine the parties' rights, duties, and obligations at issue. Consequently, the Arbitrator finds Claimants have failed to prove the MOM Parties breached the Management Agreement.

C. Claimants' Direct Forcible Entry and Forcible Detainer Claims Against Makhijani, Continuum, and the MOM Parties (FAC at 31-33)

Claimants assert the MOM Respondents violated California's forcible entry and forcible detainer laws by breaking into and seizing the 4G offices. To establish this claim, "the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer." (CCP § 1172.) The law explicitly prohibits entry "into any real property" "[b]y breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror." (CCP § 1159.) Similarly, the law prohibits "[b]y force, or by menaces and threats of violence, unlawfully hold[ing] or keep[ing] the possession of any real property, whether the same was acquired peaceably or otherwise." (CCP § 1160.)

On July 24, 2023, while Honarkar and Respondents were in court on this matter, Kluchin, Haddad, and Miller, along with a number of other individuals, broke into the 4G offices at 775 Laguna Canyon Road as 4G employees were working. (Ex. 773.) A glass door was shattered with a hammer and the doors at the front entrance were forced open. (*Id.* at 4.) Property was removed from the 4G offices.

While the MOM Respondents do not dispute these facts, they contend no forcible entry or detainer occurred, because they were joint owners of 4G. But the evidence shows 4G was not a Contributed Entity. (Exs. 583, 1354; 7.3 Tr. at 1915:7-1919:6.) Regardless, the MOM Respondents' actions bear all the hallmarks of improper self-help under California law.

A party's "title or right of possession is no defense;" possession is irrelevant to the determination of forcible entry. (*Daluiso v. Boone* (1969) 71 Cal. 2d 484, 486.) An unlawful detainer action is the only legal way to obtain possession of real property. (*Glass v. Najafi* (2000) 78 Cal. App. 4th 45, 48-49 [forcible detainer and entry statutes "reflect a policy, with deep roots in English law, barring the use of forceful self-help to enforce a right to possession of real property and requiring instead the use of judicial process to gain possession"]; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1038 [landlords may enforce rights "only by judicial process, not by self-help"]; *Jordan v. Talbot* (1961) 55 Cal. 2d 597, 608 [forcible detainer found where forcible entry was followed by "removal of plaintiff's furniture and [defendant's] admonishment to 'Get the hell out of here.'"]; CCP § 1160.)

Accordingly, the Arbitrator finds the MOM Respondents violated both the forcible entry and forcible detainer statutes. Claimants are thus entitled to the restitution of the 4G offices and any property removed, plus incidental damages. (*Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219 [“The plaintiff’s interest in peaceable even if wrongful possession is secured against forcible intrusion by conferring on him the right to restitution of the premises, the primary remedy, and incidentally awarding damages proximately caused by the forcible entry”].)

D. Claimants’ Derivative Conversion Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 28-29)

Claimants assert the MOM Respondents are liable to the MOM JV Entities for conversion of the MOM JV Entities’ assets (*e.g.*, loan and sale proceeds) in six separate instances. Specifically, Claimants claim conversion of (1) \$20 million in Nano Loan proceeds, (2) \$1 million in Tesoro Loan proceeds, (3) \$5.1 million in proceeds from the sale of TIC interests, (4) \$11.6 million in Tesoro Redlands Preferred Bank loan proceeds, (5) excessive distributions the MOM Parties made to themselves, and (6) deeds of trust on properties at issue in the potential \$175 million loan from Coastline Loans, LLC (“Coastline Loan”) in June 2021. These derivative claims are stayed as a result of the MOM JV Entities’ bankruptcy. Consequently, the analysis and disposition of these claims set forth in § III.D. of the Partial Interim Award has been omitted from this Partial Final Award. However, these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

E. Claimants’ Derivative Penal Code Section 496 Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 30-31)

Claimants argue the acts of conversion also violated Section 496. This derivative claim is stayed as a result of the MOM JV Entities’ pending bankruptcy. Therefore, the analysis and disposition of this claim set forth in § III.E. of the Partial Interim Award has been omitted from this Partial Final Award. But this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

F. Claimants’ Derivative Unjust Enrichment Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 29-30)

Claimants assert an unjust enrichment claim, arguing the MOM Respondents have looted the MOM JV Entities, using them as personal slush funds and enriching themselves. This derivative claim is stayed as a result of the MOM JV Entities’ bankruptcy. Accordingly, the analysis and disposition of this claim set forth in § III.F. of the Partial Interim Award has been omitted from this Partial Final Award. Still, this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

G. Personal Liability of Makhijani

Claimants argue Makhijani is personally liable for fraudulent inducement and forcible entry and detainer because an agent is always liable for his own torts; and he is an alter ego of Continuum and the MOM Parties. The MOM Respondents concede Makhijani is their agent, and is liable for his own torts, but argue Claimants failed to prove fraudulent inducement by Makhijani (apart from the other MOM Respondents) and failed to prove he is the alter ego of Continuum or the MOM Parties.²⁴

The Arbitrator finds Claimants have proven Makhijani was personally involved in the fraudulent inducement and other non-contract claims discussed above. He directed and participated in the negotiation of the Term Sheet (7.2 at 1873:14-17), the Operating Agreements and the Other JV Related Agreements. (Exs. 2307, 2382, 319.) He admitted he “was personally involved” with the Term Sheet and other JV agreement negotiations. (Ex. 758 ¶ 5.) He even admitted he was “personally involved” in obtaining the Nano Loan. (Ex. 758 ¶¶ 10-11.) Finally, other MOM Respondent agents testified Makhijani controls and manages the MOM JV Entities’ daily operations. (6.27 Tr. at 978:14-21.) Therefore, Makhijani is personally liable for the fraudulent inducement and other non-contract claims based on his own actions.²⁵

The Arbitrator finds Claimants have not proven Makhijani is the alter ego of Continuum or the MOM Parties. Alter ego is “an extreme remedy, sparingly used.” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal. App. 4th 523, 539.) It requires proof of two conditions: “First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.” (*Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155.)

The evidence shows Shyam, not Makhijani, is the owner of Continuum. (7.2 Tr. at 1650:5-14 [in the hierarchy of Continuum, Makhijani works under and reports to Shyam]; 7.11 Tr. at 3561:7-12, 3562:18-21, 3564:9-3565:5; *Hasso*, 227 Cal. App. 4th at 155.) And there would be no inequitable result if the acts in question were treated as those of Continuum or the MOM Entities, rather than as Makhijani’s acts. (*Ibid.*) That is, there is no evidence that either Continuum or the MOM Parties are “judgment proof,” such that they could not pay for any damages awarded to Claimants. (*Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 528 [adding alter ego manager and sister company to a judgment to avoid prejudice, when judgment debtors’ actions caused assets to disappear].) Therefore, Makhijani is not personally liable for the fraudulent inducement and other non-contract claims based on the alter ego theory.

²⁴ The MOM Respondents make no such argument relative to the other personal liability claims.

²⁵ The Arbitrator notes no claims for conspiracy or aiding and abetting were alleged against Makhijani (unlike Nano) in the FAC and none were argued in the closing briefs. So, the Arbitrator expresses no opinion on those theories.

H. Claimants' Conspiracy and Aiding/Abetting Fraudulent Inducement Claims Against Nano (FAC at 33-37)

Claimants argue Nano is liable for the fraudulent inducement/promissory fraud discussed above (§ III.A.), because Nano conspired with and aided and abetted the MOM Respondents.

Conspiracy is “a form of vicarious liability by which one defendant can be held liable for the acts of another,” where all have “agreed to a common design to commit a wrong” that damages a plaintiff. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal. App. 5th 630, 652.) Each member of a conspiracy must have “acted in concert” and come to “a mutual understanding to accomplish a common and unlawful plan,” wherein one or more of them “committed an overt act to further” the plan. *Id.* The elements of the claim are: “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” (*AREI II Cases* (2013) 216 Cal. App. 4th 1004, 1022.) Participation, cooperation, or unity of action in a conspiracy is typically proven by circumstantial evidence, including, “the nature of the act done, the relation of the parties, [and] the interests of the alleged conspirators.” (*Rickley v. Goodfriend* (2013) 212 Cal. App. 4th 1136, 1166.)

Liability for aiding and abetting an intentional tort may be imposed if the person “(a) knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” (*IIG Wireless*, 22 Cal. App. 4th at 653-654.) “[I]t necessarily requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act.” (*Id.* at 654.) However, a person may be liable even in the absence of any independent duty to the plaintiff. (*Nasrawi v. Buck Consultants LLC* (2014) 231 Cal. App. 4th 328, 345.)

The evidence shows Nano gave substantial assistance to, and acted in concert with, the MOM Respondents in fraudulently inducing Claimants to enter into the JV.²⁶ Gressak’s actions in particular indicate Nano and the MOM Respondents reached a “mutual understanding to accomplish a common and unlawful plan,” required for conspiracy.²⁷ Nano knew of the MOM Respondents’ fraud, as required for aiding and abetting. (*IIG Wireless*, 13 Cal. 5th at 654.)

²⁶ A bank is not immune simply by virtue of its role as a bank – liability can be found where, for example, a bank “allow[s] a person to deposit a check, payable to someone else, into a personal account, under circumstances that should have alerted the bank to the possibility of fraud.” (*Casey v. U.S. Bank Nat’l Ass’n* (2005) 127 Cal. App. 4th 1138, 1151, n.3.) The Arbitrator notes these circumstances are comparable to Nano’s diversion of the Nano Loan proceeds from the MOM JV Entities directly into a Continuum bank account.

²⁷ The Arbitrator finds Gressak’s self-serving contrary testimony carried little weight, as it was not credible or consistent with the documentary evidence. Regardless, his testimony as to Nano’s obligations and responsibilities did not materially move the needle in either direction. The documents told the story.

As to Nano's knowledge of and active participation in the fraud, Nano had an existing relationship with Honarkar, having issued him multiple loans prior to the JV negotiations, and Nano was aware Honarkar and 4G were the owners of the properties used to secure the Nano Loan. (Exs. 123; 130; 215 at 3-7, 16, 18-21.) Honarkar testified he sought out Gressak's advice because he believed he and Gressak were friends, and he trusted Gressak when Gressak introduced him to Makhijani for purposes of discussing a potential JV with Makhijani's investors. (Ex. 52; 6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) Again, the ties and cross-connections between Nano, Continuum, and Makhijani run deep. (Ex. 1000 at 102:12-103:14, 181:18-190:6, 200:20-201:3; 6.26 Tr. at 587:24-588:22, 797:12-799:16.)

Against that background, Nano issued the \$150 million LOI to Honarkar on May 19, 2021, for a loan to refinance (with other lenders) the LoanCore debt. (Ex. 106.) The \$150 million Nano loan was to be secured by the same properties used to secure the \$20 million Nano Loan. (Exs. 106, 130.) Though Nano now claims it did not have the capacity to make a \$150 million loan, Gressak actively perpetuated the pretense in the days ahead of the "closing." (Exs. 139, 211, 171; Ex. 1000 at 40:9-41:6; 6.26 Tr. at 606:20-607:16 [Buchanan – funding would have been "near impossible"].) Gressak was aware the MOM Respondents had misrepresented only three lenders would be involved in the LoanCore refinance (First Choice, Preferred, and Lone Oak). (Exs. 187, 229.) In fact, Nano used the \$150 million LOI to gather information about Honarkar's properties, failing to differentiate between the \$150 million Nano LOI and the \$20 million Nano Loan in their due diligence communications. (Exs. 4017-4020, 123.)

Simultaneously, Nano was working with Continuum/Makhijani/Shyam on the \$20 million Nano Loan to the MOM JV Entities. On May 20, 2021, prior to the execution of the Term Sheet on May 24, 2021 (Ex. 148), Nano issued the Nano Loan LOI to Shyam, which contemplated securing the Nano Loan with properties Nano knew were owned by Claimants. (Exs. 130, 215.) Nano did not include Honarkar on any correspondence about the \$20 million Nano Loan nor did it seek his consent to encumber the properties it knew belonged to him and 4G. Though Nano points to the Term Sheet as providing it authority to issue the Nano Loan to the MOM JV Entities, the Term Sheet does not mention the MOM JV Entities by name nor did they even exist before the Operating Agreements were signed on June 8, 2021.²⁸

Nano knew the MOM Respondents intended to use the Nano Loan proceeds as their initial contribution to the JV because Makhijani told Gressak so before the Nano Loan LOI was even issued to Shyam. (7.8 Tr. at 2729:17-2730:6; 2549:5-2550:2.) But Nano never revealed the MOM Respondents' intent as to the initial contribution in any written communications or documents that might have alerted Honarkar. (*Id.* at 2730:7-2731:13, 2734:6-2739:19.)

²⁸ While Nano says its actions were similar to the other banks involved in the LoanCore refinance, it is important to note the other banks are on different footing as to their connections with Continuum and Makhijani. Also, Honarkar was aware of and consented to the other bank loans and related encumbrances on his properties. (Exs. 220-222.)

Internal records state Nano made the Nano Loan to “strengthen[] the Banc’s position of the history and relationship with sponsors of the joint-venture [*i.e.*, Continuum and Makhijani].” (Ex. 215 at 4.) Gressak was “strongly advocating for this loan to get made” and “overrode opposition to it” from other bank officers, including Buchanan and the chief lending officer, who were concerned the loan was not secured and would be scrutinized by regulators. (6.26 Tr. at 573:15-577:11, 586:2-24, 588:15-589:23.)

Buchanan drafted the June 7, 2021 memo to the Nano Loan Committee to memorialize the unusual request for the loan proceeds to be transferred to an entity other than the borrower, placing the onus on Gressak. (Ex. 240; 6.26 Tr. at 593:8-597:3 [Buchanan was concerned about “direction that [Nano] had received, as well as the optics with this particular loan”]; Ex. 1000 [Nano PMK – “Q: Was the loan committee consulted about the change in disbursement? A: I don’t think so”].)

But the June 7, 2021 internal memo falsely stated the loan proceeds had to be placed in Continuum’s account because the MOM JV Entities had indicated the refinancing escrow was not open and could not receive transfers. (Ex. 240.) Both Makhijani and Shyam testified they never told Nano the refinancing escrow was not yet open. (7.3 Tr. at 2159:20-2164:11; 7.12 Tr. at 3685:10-3686:10.) And Nano obviously knew the refinancing escrow was open on June 7 – it wired \$20 million from Continuum’s bank account to the refinancing escrow less than an hour after first depositing the funds in Continuum’s account. (Exs. 270, 272, 278 at 2.)

Nano closed and funded the \$20 million Nano Loan on June 7, 2021, before the MOM JV Entities’ Operating Agreements were finalized and executed, meaning the MOM JV Entities did not exist on the date the Nano Loan was made to them. (Ex. 4104 at 4-5.) Nano also issued the Nano Loan based only on the signatures of Continuum employees, not Honarkar. (Ex. 239.)

Nano also placed the \$20 million Nano Loan proceeds into a bank account belonging to Continuum, knowing Continuum was not the borrower and the assets used to secure the loan belonged to Honarkar and 4G. (Ex. 240 [“Gressak has spoken with the Borrower and has approved the funding of the account”].) Nano routed this money to the Continuum bank account at Shyam’s request, based on documents signed by Shyam, without verifying Shyam’s authority to effectuate the transfer to his own corporate account on behalf of the MOM JV Entities. (Exs. 237, 270; 7.12 Tr. at 3794:20-3799:6 [Prendergast – “[Gressak] just told me that, yes, Deba Shyam, by reviewing the term sheet, he has the authority...I just took [Gressak’s] word for it...”].) Shyam is not mentioned in the Term Sheet, the only JV document in existence at the time of the Nano Loan funding. (Ex. 148.) Nano also violated its own policy by failing to get a request in writing from all three of the MOM JV Entities as borrowers to reroute the funds from the approved use, since Shyam was the Manager of only the MOM CA Manager, not the MOM AS Manager or the MOM BS Manager. (Ex. 1000 at 139:10-15 [Nano PMK testimony].)

Nano then took security interests under the deeds of trust securing the Nano Loan, knowing they were Claimants' properties, and did so without Honarkar's consent. Nano only publicly recorded these deeds of trust after receiving a Cease and Desist Order from the Federal Reserve. (Exs. 234-236, 239 at 88-127, 515 at 6-47, 514 at 2; Ex. 4127 [Gressak – "these are nothing but AOC [abundance of caution] liens" and "I don't need to be on this anymore"].)

Finally, Nano collected fees and interest on the Nano Loan, despite knowing of the MOM Respondents' fraud. (Exs. 1087, 215, 389.) And after this action was filed, Nano obtained an indemnity from the MOM Respondents for Claimants' claims that, *inter alia*, the Nano Loan was obtained without "the necessary consent from Mohammad Honarkar." (Ex. 869, ¶ 19.)

Even after the JV was formed, Nano continued to assist the MOM Respondents by concealing material information from Honarkar. Nano issued the \$1 million Tesoro Loan without Honarkar's knowledge. Then, in response to a 4G employee's question concerning receipt of a related monthly billing statement, Nano indicated it was "a billing error and not applicable to Tesoro." (Ex. 2723.) Nano also complied with Kluchin's instructions to conceal information from Honarkar and his team. (Ex. 473 [Kluchin - "No one from 4G should be on this account. This is very important...Only Deba and I"]; Ex. 590 [Kluchin – "DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread"].) Similarly, after the parties' dispute erupted in February 2023, Nano assisted the MOM Respondents by restricting Honarkar's access to all JV bank accounts, including those for 4G. (Ex. 677.)

Nano cites California's economic loss rule and argues Claimants' fraudulent inducement claim is barred. However, the California Supreme Court recently clarified, "[t]he doctrine only applies to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in *Sheen*." (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal. 5th 1, 38; citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal. 5th 905, 922.) The economic loss rule does not apply to the intentional fraudulent inducement at issue here.

In summary, the record is replete with evidence Nano acted in concert with, and was aware of, the MOM Respondents' fraudulent inducement. The Arbitrator therefore finds Nano jointly and severally liable with the MOM Respondents for conspiracy to commit and aiding and abetting the commission of the fraudulent inducement. As a consequence, the Arbitrator again finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after an accounting is completed; or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet.²⁹ (*Chapman*, 220 Cal. App. 4th at 234; Civ. Code § 1692.)

²⁹ This finding may also constitute a basis for the MOM JV Entities to set aside the Nano Loan documents (including the loan agreement, the deeds of trust, and the subsidiary LLC membership interest assignments), in addition to their invalidity for lack of authority as discussed in § III.A.1. above.

I. Claimants’ Derivative Conversion and Penal Code Section 496 Claims Against Nano (FAC at 28-29, 30-31)

Claimants argue Nano is separately liable to the MOM JV Entities for conversion of the \$20 million Nano Loan and the \$1 million Tesoro Loan proceeds, which belonged, respectively, to the MOM JV Entities and Tesoro Redlands as the borrowers (Exs. 239, 411). Claimants also argue Nano violated Section 496 because it concealed and withheld, and aided the MOM Respondents in concealing and withholding, the Nano and Tesoro Loan proceeds. These derivative claims are stayed as a result of the MOM JV Entities’ bankruptcy. As a result, the analysis and disposition of these claims set forth in § III.I. of the Partial Interim Award has been omitted from this Partial Final Award. Nevertheless, these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

J. Claimants’ Derivative Breach of Contract Claim Against Nano (FAC at 37)

Claimants assert as an “alternative” that Nano breached the Nano Loan agreement by converting the Nano Loan proceeds and transferring them to Continuum, rather than to the MOM JV Entities. This derivative claim is stayed as a result of the MOM JV Entities’ bankruptcy. So, the analysis and disposition of this claim set forth in § III.J. of the Partial Interim Award has been omitted from this Partial Final Award. But this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

K. Claimants’ Accounting Claim Against the MOM Parties (FAC at 26)

Claimants seek an accounting of the MOM JV Entities’ books and records by an independent third party, from the creation of the JV to the present. “An action for an accounting has two elements: (1) ‘that a relationship exists between the plaintiff and defendant that requires an accounting’ and (2) ‘that some balance is due the plaintiff that can only be ascertained by an accounting.’” (*Sass v. Cohen* (2020) 10 Cal. 5th 861, 869.)

Both prongs are satisfied here. First, the parties are in a business relationship with each other, as members and managers of the MOM JV Entities, responsible for owning and operating real estate assets worth hundreds of millions of dollars. Second, a balance is owed to Claimants that can only be ascertained by an accounting. The Operating Agreements required the MOM Parties to create and maintain adequate books and records for the MOM JV Entities, to provide regular financial reporting to Claimants, and to allow inspection of the complete books and records upon request; but they have failed to fulfill these obligations. (§ III.A.5. above; Ex. 313, 314, 315 §§ 12.1, 12.2; Ex. 1377, 6.24 Tr. at 250:1-254:1; Ex. 659; 7.8 Tr. at 2533:16-2539:19.) As a result, none of the damages experts could make an accurate determination of the JV’s income, expenses, assets, or liabilities. (7.9 Tr. at 3008:6-3012:7, 3023:1-7.)

An accounting is particularly warranted here because, absent one, Claimants have no way to determine the full scope of the MOM Respondents' misconduct and the resulting damages. The MOM Parties remain in full control of the MOM JV Entities, and have excluded Claimants since Spring 2023. (Ex. 677; 7.12 Tr. 3850:12-3851:5; 6.25 Tr. at 459:20-23.) Claimants thus have no way of knowing what the MOM Respondents have done in almost two years.³⁰

The MOM Respondents' arguments against an accounting are meritless. They claim neither Claimants nor the MOM JV Entities are owed any money, because: (a) there is no validity to any of Claimants' claims; and (b) the undisputed evidence shows that, in addition to the initial \$30 million capital contribution, the MOM Members advanced \$89.5 million to the JV, \$49.5 million of which remains outstanding. The Arbitrator rejects these arguments.

The Arbitrator has found the majority of Claimants' claims are valid. Arbitrator also finds there is no reliable evidence establishing the fact or amount of the claimed "advances."³¹ More broadly, due to Respondents' active concealment, Claimants have been unable to verify the accuracy and completeness of the few financial records the MOM Respondents have provided. The accounting is also needed to verify the amount of the MOM Respondents' claimed offsets.

Claimants have proven they are entitled to an accounting.

L. Claimants' Declaratory Relief Claim Against the MOM Parties (FAC at 27)

The parties have disputes as to their respective rights, duties, powers, and obligations under the Operating Agreements, and these disputes are generally amenable to declaratory relief. (CCP § 1060.) The Arbitrator finds Claimants are entitled to the declaratory relief they seek on the following specific issues and for the following reasons:

(1) The MOM Respondents fraudulently induced Claimants into entering into the Operating Agreements.

(2) On July 24, 2023, the MOM Respondents committed forcible entry and detainer at the 4G corporate offices. As a result, Claimants are entitled to immediate possession of the 4G offices. The MOM Respondents should be ordered to return all information and things removed from the 4G offices and to compensate Claimants for the value of any items lost or destroyed.

³⁰ The MOM Respondents admitted their discovery responses were incomplete as to what loans they obtained related to JV properties, and that they routinely did not inform Honarkar about large financial decisions because they "didn't think it was necessary." (6.27 Tr. at 1008:2-17, 1012:14-16, 1071:19-1073:10; see also Exs. 967, 3623.)

³¹ The MOM Respondents and Nano also euphemistically refer to these "advances" as "infusions," a term seemingly calculated to obfuscate whether they were Contributions or loans to the MOM JV Entities.

(3) Palm Desert Collective Resorts LLC, 424 Marguerite Ave. LLC, and 8871 Research Dr. LLC are “Held-Back LLCs” under the ACA and the Operating Agreements and thus, were never contributed to the MOM JV Entities. (Ex. 304 and Ex. E attached thereto; Exs. 313-315.)

(4) Although the following entities appear on Exhibit C of the Operating Agreements and ACA, they are not now and never have been owned by the MOM JV Entities: 4G (Ex. 583 [Letter Agreement – 4G is the MO Member]), Modan LLC (majority owned by Niazi), BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing 82 LLC, and Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

(5) The sole “Projects” as defined in the Operating Agreements and ACA are Hotel Laguna LLC and Newport Crossing (Aryabhata LLC). (Ex. 315, § 1.45; Ex. 689, § 1(a).)

As to issues (1) and (2), the Arbitrator has found in favor of Claimants on the fraudulent inducement, forcible entry, and forcible detainer claims. The Arbitrator has considered and rejected all of the MOM Respondents’ factual and legal arguments against these claims.

As to issue (3), the MOM Respondents make no reasoned argument to support their bare assertion that these “Held-Back LLCs” were intentionally contributed pursuant to the ACA.

As to issue (4), the parties make a host of legal and factual arguments, principally focused on 4G and Modan, and the proper interpretation of the Operating Agreements and the ACA. However, the applicable law and the weight of the evidence, including the admissible parol evidence,³² shows: 4G and Modan were not intended to be “Other Owned LLCs” under the Operating Agreements (Exs. 313-315, § 1.40 and Ex. C), nor were they intended to be “Contributed Assets” or “MOM CA LLCs” under the ACA (Ex. 304, §§ 1.40, 2(a) and Ex. C). The Letter Agreement (Ex. 583, ¶ 3) further supports these conclusions. And, at least as to 4G (a corporation, not an LLC), the opposite conclusions would mean 4G is both a Member and an asset of the MOM JV Entities. This interpretation would be absurd.

As to issue (5), the MOM Respondents make no argument in their briefs to support their claim it “fails for the reasons set forth above, section [*].” (Brackets and content in original.)

³² See *Nw. Nat’l Ins. Co. v. Esmark, Inc.* (Del 1996) 672 A.2d 41, 43 [courts may consider extrinsic evidence where there is an ambiguity in the contract] and *Peden v. Gray* (Del. 2005) 886 A.2d 1278, 2005 WL 2622746, at *2 [“parol evidence is admissible to resolve a contractual term that is ambiguous”]; see also *Rosenfeld v. Abraham Joshua Heschel Day Sch., Inc.* (2014) 226 Cal. App. 4th 886, 897 (same).

M. MOM Members' (Counter) Claims Against Honarkar

The MOM Members claim Honarkar is liable for trespass, conversion, violation of Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory and injunctive relief.³³ All of these claims depend on the existence and enforceability of the Operating Agreements and the Other JV related Agreements. But the Arbitrator has found Claimants may rescind these agreements for fraud in the inducement and failure of consideration. In any event, the MOM Parties' prior material breach of the Operating Agreements discharged Honarkar from any further duty to perform thereunder. (*Level 4 Yoga, supra*, at *27 ["Delaware law firmly supports the principle that a party to a contract is excused from performance if the other party is in material breach of his contractual obligations"]; see also Honarkar Response to MOM Respondents' Demand, at 4-5, Twelfth Affirmative Defense.) It follows the MOM Parties' claims against Honarkar must fail.

N. Remedies

1. Rescission With Restitution and Consequential Damages

Claimants are entitled to rescind the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, all on account of Respondents' fraud in the inducement. Claimants are also entitled to rescind the Operating Agreements and the Other JV Related Agreements, for the failure of consideration due to the failure to provide the initial contribution. (§§ III.A.6., III.B.2., III.G., and III.H. above.)

In cases like this, "When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both." (Cal. Civ. Code § 1691; *Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal. App. 5th 881, 888.)

"Rescission extinguishes the contract, terminates further liability, and restores the parties to their former positions by requiring them to return whatever consideration they have received. Thus, the relief given in rescission cases—restitution and in some cases consequential damages—puts the rescinding party in the status quo ante, returning him to his economic position before he entered the contract." (*Sharabianlou v. Karp* (2010) 181 Cal. App. 4th 1133, 1145.)

³³ These claims (except the Section 496 claim) were asserted in the demand filed by the MOM Respondents and the MOM JV Entities in the MOM Arbitration on September 27, 2023, together with Attachment 1 and the exhibits thereto, including the First Amended Complaint originally filed in OCSC Case No. 30-2023-01322886. To the extent the MOM JV Entities assert these same claims, they are stayed as a result of their bankruptcy. But these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

Where rescission is warranted, “[t]he aggrieved party shall be awarded complete relief, including restitution of benefits, if any, conferred by him as a result of the transaction and any consequential damages to which he is entitled.” (Civ. Code § 1692; *Wong v. Stoler* (2015) 237 Cal. App. 4th 1375, 1387–88, 1389–90.) Although in general each party must return the consideration they received, if “defendant has been guilty of fraudulent acts or conduct which have induced the agreement between him and the plaintiff,” courts “are not so much concerned with decreeing that defendant receive back the identical property with which he parted in the transaction, as they are in declaring that his nefarious practices shall result in no damage to the plaintiff.” (*Wong, supra*, 237 Cal. App. 4th at 1389.) And the defrauding party has the burden to prove any offsets to which they claim they are entitled. (*McCoy v. West* (1977) 70 Cal. App. 3d 295, 302-303; *Gentry v. Kelley Kar Co.* (1961) 193 Cal. App. 2d 324, 337; *Grill v. Hunt* (1992) 6 Cal. App. 4th 73, 79 [“The implicit rationale of these cases is that risk of any difficulty in proof should not inure to the benefit of the party responsible for the failure of the contract”].)

All told, if Claimants elect rescission, they will be entitled to restitution and consequential damages in amounts to be determined following the accounting, and Respondents will have the burden of proving their right to any offsets.

2. Damages Without Rescission

In the alternative, if Claimants elect to affirm and retain the benefits of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, then they will be entitled to recover damages for fraud in the inducement and breach of the Operating Agreements. (§§ III.A. and III.B. above.) While the fact of these damages is certain, and some amounts are known, the total amount will be determined following the accounting.

3. Derivative Damages

Claimants contend they are entitled to recover damages from Respondents, for the derivative conversion, Section 496, and unjust enrichment claims asserted on behalf of the MOM JV Entities (§§ III.D., III.E., III.F. and III.I. above), with or without rescission. Spindler calculated Respondents’ actions caused at least \$45,011,937 and at most \$169,845,578 in damages to the MOM JV Entities themselves. (Exs. 1006, 1509; 7.9 Tr. at 3081:17-3082:1.)

These derivative damages claims are stayed as a result of the MOM JV Entities’ bankruptcy. The analysis and disposition of these derivative damages claims set forth in § III.N.3. of the Partial Interim Award has therefore been omitted from this Partial Final Award. But these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.) At that time, the accounting will be completed and the Arbitrator will have determined the amount of these damages to be awarded (including any trebling).

4. Punitive Damages

To recover punitive damages Claimants must prove, by clear and convincing evidence, that Respondents have “been guilty of oppression, fraud, or malice....” (Civ. Code § 3294.) Claimants argue they have proven oppression, fraud, and malice. The MOM Respondents argue they have not proven oppression, fraud, or malice. The Arbitrator has found Claimants have proven, by clear and convincing evidence, that Respondents committed fraud in the inducement. (§ III.A. above.) On this basis alone, Claimants are entitled to punitive damages. (Civ. Code § 3294(c)(3).) The Arbitrator further finds, based upon the totality of the evidence, Claimants have proven, by clear and convincing evidence, that Respondents have been guilty of oppression and malice as those terms are defined in Civil Code section 3294(c)(1) and (c)(2). However, until the accounting is complete, the full nature and extent of Respondents’ wrongdoing, the damages Claimants have suffered as a result, and the other factors the Arbitrator will need to consider when awarding punitive damages cannot be determined. (See generally, 6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1727- 1785.) Therefore, the Arbitrator will determine the amount of punitive damages to be awarded after the accounting is complete.

5. Attorney Fees and Costs

As the prevailing parties, Claimants are awarded a total of \$9,197,426.31 in attorney fees and costs. The MOM Parties and the Makhijani Parties are jointly and severally liable for the entire \$9,197,426.31 total. But of the \$9,197,426.31 total, Nano is jointly and severally liable (with the other Respondents) for only \$5,229,185.14. (See Arbitrator’s Ruling on Motion for Attorney Fees and Costs dated and filed concurrently herewith; § IV.14. below; FAC at 38.)

6. Interest

Claimants claims for pre and post-judgment interest will be resolved in the Final Award after the accounting is completed and the amount of damages to be awarded is determined.

7. Receiver

Claimants request the appointment of a receiver on the grounds the MOM Respondents have had complete control of the JV since they excluded Honarkar in 2023. (FAC at 38; Ex. 677; 6.25 Tr. at 459:20-23.) They argue a receiver is necessary to place the JV in “safe hands” and to prevent the MOM Respondents from further dissipating the JV’s assets before the accounting is completed and this arbitration is concluded. Claimants’ request for a receiver is stayed as a result of the MOM JV Entities’ bankruptcy. The analysis and disposition of this request set forth in § III.N.5. of the Partial Interim Award has been omitted from this Partial Final Award but will be included in the Final Award in this arbitration. (§ IV.17. below.)

IV. SUMMARY OF CONCLUSIONS AND FURTHER PROCEEDINGS

1. Claimants have proven their fraudulent inducement claim against Makhijani, Continuum and the MOM Members; and Claimants are therefore entitled to elect the alternative remedies of either compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A., III.G., and III.N.1. above; ¶ 13 below; FAC at 22-23.)
2. Claimants have proven their breach of contract (Operating Agreement) claims against the MOM Parties; and Claimants are therefore entitled to the alternative remedies of compensatory damages or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.B. and III.N.2. above; ¶ 13 below; FAC at 24-25.)
3. Claimants have not proven their breach of contract (Management Agreement) claim against the MOM Parties. (§ III.B.6. above; not pleaded in FAC.)
4. Claimants have proven their forcible entry and forcible detainer claims against Makhijani, Continuum and the MOM Parties; and Claimants are therefore entitled to restitution of the subject premises (775 Laguna Canyon Road) and incidental damages in amounts to be determined. (§§ III.C. and III.G. above; ¶ 13 below; FAC at 31-33.)
5. Claimants derivative conversion claims against Makhijani, Continuum, the MOM Parties, and Nano (Partial Interim Award §§ III.D., III.G. and III.I.; ¶ 13 below; FAC at 28-29) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
6. Claimants derivative Section 496 claims against Makhijani, Continuum, the MOM Parties, and Nano (Partial Interim Award §§ III.E., III.G., and III.I.; ¶ 13 below; FAC at 30-31) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
7. Claimants derivative unjust enrichment claims against Makhijani, Continuum, and the MOM Parties (Partial Interim Award §§ III.F. and III.G.; ¶ 13 below; FAC at 29-30) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
8. Claimants have proven their conspiracy to commit and aiding and abetting fraudulent inducement claims against Nano; and Claimants are therefore entitled to the alternative remedies of compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A. and III.H. above; ¶ 13 below; FAC at 33-37.)

9. Claimants derivative breach of contract claim against Nano (Partial Interim Award § III.J.; FAC at 37) is stayed as a result of the MOM JV Entities’ bankruptcy, but it will be analyzed and disposed of in the Final Award. (§ 17 below.)

10. Claimants have proven their accounting claim against the MOM Parties; Claimants are therefore entitled to the accounting requested; and the accounting shall be the subject of further proceedings in this arbitration. (§ III.K. above; §§ 15 and 17 below; FAC at 26.) The further proceedings shall abide by the Bankruptcy Court order which modified the automatic stay and allowed Claimants to: “(ii) proceed in the above-captioned bankruptcy cases with the accounting granted in the [Partial Interim and now Partial Final] Arbitration Award in accordance with protocols to be agreed upon by the parties to the Arbitration or otherwise entered by this Court.”

11. Claimants have proven their declaratory relief claim against the MOM Parties; and Claimants are therefore entitled to the declaratory relief requested. (§ III.L. above; FAC at 27.)

12. The MOM Members have not proven their (counter) claims against Honarkar (trespass, conversion, Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory or injunctive relief). (§ III.M. above.) To the extent the MOM JV Entities also assert these claims, they are stayed as a result of their bankruptcy, but they will be analyzed and disposed of in the Final Award. (§ 17 below.)

13. All amounts of restitution, consequential damages, compensatory damages, incidental damages, punitive damages and interest (if any) to be awarded to Claimants shall be determined in further proceedings in this arbitration. (§§ 1, 2, and 4-8 above; and §§ 15 and 17 below.)

14. Claimants are awarded a total of \$9,197,426.31 in attorney fees and costs. The MOM Parties and the Makhijani Parties are jointly and severally liable for the entire \$9,197,426.31 total; but of the \$9,197,426.31 total, Nano is jointly and severally liable (with the other Respondents) for only \$5,229,185.14. (§ III.N.5. above; JAMS Rule 24(f) and (g); FAC at 38.)

15. This Partial Final Award resolves all claims submitted to arbitration, with the exception of the issues (the “Remaining Issues”) to be resolved in further proceedings in this arbitration including: (i) the claims stayed as a result of the MOM JV Entities’ bankruptcy; (ii) the accounting; and (iii) the determination of the amounts of restitution, damages, interest, attorney fees and costs to be awarded. The Arbitrator reserves jurisdiction to determine all aspects of the Remaining Issues, together with such additional issues as may arise between the parties. It is intended this Partial Final Award will be subject to judicial review as to those issues finally determined herein, so Claimants may return to the Superior Court and seek to (i) confirm this Partial Final Award, and (ii) perfect their right to the accounting granted herein (§ III.K. above). (See JAMS Rules 24 and 25; *Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1437.)

16. This Partial Final Award shall be considered final, for purposes of a judicial proceeding to enforce, modify or vacate, this Partial Final Award pursuant to JAMS Rule 25, fourteen (14) calendar days after service if no request for a correction is made, or as of the effective date of service of a corrected Partial Final Award. (JAMS Rule 24(i) and (j).)

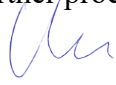
17. After the Remaining Issues are determined; and after all further proceedings in this arbitration are concluded; the Arbitrator will issue a Final Award which will resolve all claims submitted to arbitration and will include a supplemental award for attorney fees and costs incurred through entry of the Final Award in this arbitration. (See JAMS Rules 24 and 25; ¶ 14 above; *Hightower, supra*, 86 Cal.App.4th at 1437-1441 [Arbitrator has authority to issue partial award and reserve jurisdiction to issue a final award on the remaining issues].)

18. Consolidated Scheduling Order No. 100 as amended by Scheduling Order Nos. 101-106 shall remain in full force and effect and shall govern all further proceedings in this arbitration.

19. The virtual interim status conference previously scheduled for at 8:30 a.m. on June 12, 2025 is continued to 8:30 a.m. on July 17, 2025. A further interim status conference or a final status conference will be scheduled at that time.

20. Nothing contained in this Partial Final Award is intended to constitute or to require any act contrary to the automatic stay issued pursuant to 11 U.S.C. § 362(a) in the MOM JV Entities' Bankruptcy. If the Bankruptcy Court determines there is a conflict between anything contained in this Partial Final Award and the automatic stay, the latter shall prevail; but the provision of this Partial Final Award so affected shall: (i) be curtailed and limited only to the extent necessary to bring it into conformity with the requirements of 11 U.S.C. § 362(a); and (ii) automatically become one of the Remaining Issues to be resolved in further proceedings in this arbitration.

DATED: May 23, 2025



Hon. David A. Thompson (Ret.)

EXHIBIT 3

**JAMS ARBITRATION
No. 5220003126**

MOHAMMAD HONARKAR AND 4G WIRELESS, INC.,

Claimants,

MAHENDER MAKHIJANI; CONTINUUM ANALYTICS, INC.; et al.,

Respondents,

and

MOM AS INVESTCO, LLC; MOM BS INVESTCO, LLC; et al.,

Nominal Respondents.

CONSOLIDATED WITH JAMS ARBITRATION NO. 5200001122

RULING ON MOTION FOR ATTORNEY FEES AND COSTS

Counsel:

Counsel for Honarkar and 4G (together, “Claimants”):¹

Aaron May, Esq., Joseph Ybarra, Esq., Abigail E. Marion, Esq., Thomas Rubinsky, Esq., and Halpern, May, Ybarra, Gelberg LLP; and Sam Maralan, Esq., and Maralan Law, P.C.

Counsel for the MOM Members and the MOM Managers (together, the “MOM Parties”):

Michael Farrell, Esq., Scott Leipzig, Esq., Tim Hsu, Esq., Stephanie Roberts, Esq., Gabriela Perez, Esq., Leilee Ghassemi, Esq., Shauna Woods, Esq., Suzanne Kenney, Esq., and Allen Matkins Leck Gamble Mallory & Natsis LLP.²

¹ All capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Partial Interim Award dated February 21, 2025 (the “Partial Interim Award”).

² Allen Matkins also represented: (i) the MOM JV Entities, at all times prior to April 23, 2025, including during the Hearing and this Motion, and (ii) Makhijani and Continuum, prior to November 9, 2023.

Counsel for the MOM JV Entities:

Anthony Bisconti, Esq., and Bienert Katzman Littrell Williams, LLP.

Counsel for Makhijani and Continuum (together, the “Makhijani Parties”):

Marc Cohen, Esq., and Cohen Law Group, APC.

Counsel for Nano:

Ann Marie Mortimer, Esq., Lawrence DeMeo, Esq., Hakop Stepanyan, Esq., and Hunton Andrews Kurth LLP.

I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY

The Partial Interim Award:

(1) found in favor of Claimants on their direct claims for: (A) fraudulent inducement against the Makhijani Parties and the MOM Members; (B) breach of contract (Operating Agreements) against the MOM Parties; (C) breach of the implied covenant of good faith and fair dealing against the MOM Parties; (D) accounting against the MOM Parties; (E) declaratory relief against the MOM Parties; (F) forcible entry and forcible detainer against the Makhijani Parties and the MOM Parties; (G) conspiracy to commit fraudulent inducement against Nano; and (H) aiding and abetting fraudulent inducement against Nano;

(2) found against Claimants on their direct claim for breach of contract (Management Agreement) against the MOM Parties;

(3) found in favor of Claimants on their derivative claims for: (A) conversion against the Makhijani Parties, the MOM Parties, and Nano; (B) violation of Section 496 against the Makhijani Parties, the MOM Parties, and Nano; and (C) unjust enrichment against the Makhijani Parties and the MOM Parties;

(4) found against Claimants on their derivative claim for breach of contract against Nano;

(5) found against the MOM Members and the MOM JV Entities on their direct (counter) claims against Honarkar for trespass, conversion, Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory and injunctive relief;

(6) found that Claimants, as the prevailing parties in this arbitration, are entitled to recover their attorney fees and costs in amounts to be determined by a post-Hearing motion; and

(7) stated the Partial Interim Award, together with the determinations regarding the amounts of attorney fees and costs to be awarded would be embodied in a Partial Final Award.

On February 28, 2025, the MOM JV Entities filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court of the District of Delaware; but on April 28, 2025, that Court ordered: “To the extent applicable, the automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified pursuant to section 362(d) of the Bankruptcy Code to allow the Honarkar Parties to: (i) pursue and obtain an award of attorneys’ fees and costs in the Arbitration....” On May 5, 2025, that Court also dismissed the MOM Members’ Chapter 11 bankruptcy.

Consequently, no bankruptcy stay precludes Arbitrator from issuing this ruling.

On March 5, 2025, Claimants filed their “Motion for Attorneys’ Fees and Costs” (the “Motion”). On March 17, 2025, (A) the Makhijani Parties and the MOM Parties filed a joint opposition to the Motion (the “Makhijani/MOM Opposition”), and (B) Nano filed an opposition (individually the “Nano Opposition,” and collectively with the Makhijani/MOM Opposition, the “Oppositions”). On May 9, 2025, Claimants filed a reply (the “Reply”) to the Oppositions. On April 14, 2025, Arbitrator entertained oral argument on the Motion.

The Partial Final Award of even date and filed concurrently herewith (the “Partial Final Award”), like the Partial Interim Award: (A) found in favor of Claimants on all but one of their direct claims against Respondents as detailed above; (B) found against the MOM Members on all of their (counter) claims against Honarkar, and (C) found Claimants, as the prevailing parties in this arbitration, are entitled to recover from Respondents their attorney fees and costs. The Partial Final Award also found the MOM JV Entities’ derivative claims and direct (counter) claims are currently stayed by the MOM JV Entities’ bankruptcy and it therefore omitted the analysis and disposition of these claims which had been included in the Partial Interim Award.³

Claimants seek the following amounts in attorney’s fees: \$5,042,597.50 to Halpern May Ybarra Gelberg LLP (“HMYG”); \$264,796 to Maralan, P.C. (“Maralan”); and \$228,280.00 to Much Shelist, P.C. (“MS”). (Ybarra Decl., Ex. 1; Maralan Decl., Ex. A; Zfaty Decl., Ex. A.) They also seek a 1.5x multiplier on the fees incurred, based on their contingency fee agreement with Claimants, resulting in a total of \$8,303,510.25 in attorney fees. And they seek \$893,916.06 in costs and expenses. (Ybarra Decl., ¶ 16, Exs. 2-15; Zfaty Decl., Ex. A.)

ARBITRATOR, having considered the Motion, the Oppositions, and the Reply, together with the oral arguments of counsel on April 14, 2025, the entirety of the record of the Hearing, the Partial Interim Award, and all of the other pleadings and papers on file herein, hereby FINDS, CONCLUDES, RULES, and ORDERS as follows:

³ Claimants do not seek attorney fees or costs on any of the stayed claims at this time.

II. ANALYSIS

A. Claimants Are Entitled To Recover Their Attorney Fees And Costs

As the prevailing parties under the Partial Interim Award, Claimants argue they are entitled to recover their attorney fees and costs under the Operating Agreements (Exs. 313-315, §§ 17, 19.10),⁴ the Term Sheet (Ex. 148, at 10), the October 11, 2023 Arbitration Agreement (“Nano Arbitration Agreement”) between Claimants and Nano (Ybarra Decl, Ex. 18, § 2), and California law (Civ. Code § 1717(a) (“Section 1717”); Civ. Proc. Code § 1021).⁵ They maintain there is no reasonable dispute these agreements and applicable law entitle them to recover their attorney fees and costs. The Arbitrator agrees.

The Operating Agreements, the Term Sheet, and the Nano Arbitration Agreement all permit the Arbitrator to award attorney fees and costs to the prevailing party. Claimants are the prevailing parties under Section 1717, which provides the “party prevailing on the contract” is the party that “recovered a greater relief in the action on the contract.” (§ 1717(a), (b)(1).) Because the Arbitrator found Respondents breached the Operating Agreements but Claimants did not, the Claimants are the prevailing parties under the statute on the core contracts at issue.

Further, the arbitration and attorney fee provisions of the Operating Agreements, the Term Sheet, and the Nano Arbitration Agreement are broad enough to permit the Arbitrator to award attorney fees and costs to the prevailing party on the contract and non-contract claims. (*Maynard v. BTI Group, Inc.* (2013) 216 Cal. App. 4th 984, 992 (“*Maynard*”) [attorney fee provision awarding fees based on the outcome of “any dispute” encompasses all claims, whether in contract, tort or otherwise, and apportionment is not required]; *Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal. App. 4th 1338, 1341 [parties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract].) Like the attorney fee provisions in *Maynard*, the arbitration clauses in the Operating Agreements provide that “[a]ny dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof...shall be referred to and finally determined by arbitration....” (Exs. 313-315, § 19.10 (emphasis added).)⁶

⁴ Except as otherwise noted all exhibit references are to the exhibits admitted into evidence during the Hearing.

⁵ While the fraud and other non-contractual claims are governed by California law, the claims for breach of the Operating Agreements are governed by Delaware law. (Ex. 315 at § 19.1.) Even so, the parties briefed and argued the Motion primarily as a matter of California law and Arbitrator will do the same in analyzing the Motion.

⁶ Both the Term Sheet and the Nano Arbitration Agreement contain comparably broad arbitration provisions that do not differentiate between contract and tort claims. (*See* Term Sheet, at 10 – “[a]ny dispute, controversy or claim arising out of or relating to this Term Sheet shall be referred to and finally determined by arbitration....”; Nano Arbitration Agreement, § 2 – “Claimants’ claims against Nano Banc arising out of or related to the MOM Entities ... shall be submitted to and finally determined by binding arbitration....”.)

The similarly broad attorney fee and costs provisions in the Operating Agreements state: “Should any party hereto institute **any arbitration**, action or proceeding at law or in equity to enforce **any provision hereof**, including an action for declaratory relief or for damages by reason of an alleged breach of any provision of this Agreement, **or otherwise in connection with this Agreement, or any provision hereof**, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys’ fees and costs for services rendered to the prevailing party in such action or proceeding.” (Exs. 313-315, § 17 (emphasis added).)⁷ And under broad provisions like these, “the prevailing party entitled to recover fees normally will be the party whose net recovery is greater, in the sense of most accomplishing its litigation objectives....” (*Maynard, supra*, 216 Cal. App. 4th at p. 992.)

Claimants accomplished virtually all of their litigation objectives in this case. Claimants prevailed on all but one of their direct claims against the Respondents and also prevailed on all of the (counter) claims asserted against them by the MOM Members. As a result, if Claimants elect rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, they will be entitled to restitution and consequential damages. In the alternative, if Claimants elect to affirm and retain the benefits of those agreements, they will be entitled to recover compensatory damages for fraud in the inducement and breach of the Operating Agreements. The existence of these damages is certain. Claimants are also entitled to punitive damages and declaratory relief. Respondents accomplished none of their litigation objectives.

Thus, Claimants are the prevailing parties under Section 1717 and the provisions in the parties’ agreements, and are entitled to recover their attorney fees and costs from Respondents.

Respondents’ arguments do not support a contrary conclusion. As noted above, there is no bankruptcy stay which precludes Arbitrator from issuing this ruling, because the Bankruptcy Court modified the stay in the MOM JV Entities’ bankruptcy to allow Claimants to pursue and obtain an award of attorney fees and costs in this Arbitration, and also dismissed outright the MOM Members’ Chapter 11 bankruptcy. That the MOM JV Entities’ derivative claims and direct (counter) claims are stayed by the MOM JV Entities’ bankruptcy is of no moment because Claimants are not seeking attorney fees and costs on those claims at this time. That those claims are intertwined with Claimants’ direct claims is immaterial. The uncontroverted evidence demonstrates that the entirety of the attorney fees and costs claimed by Claimants would have been incurred if their direct claims had been their only claims in this action, because the direct and derivative claims all arose out of the same facts and circumstances. (Ybarra Decl. ¶¶ 2, 3.)

⁷ See also, Term Sheet, at 10 – “The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator, and may award attorneys’ fees and costs to the prevailing party.”); Nano Arbitration Agreement, § 2 - “The Arbitrator may, in the Final Award, allocate all or part of the Arbitration Costs [fees and costs charged by JAMS and/or the Arbitrator], irrespective of which party paid those Arbitration Costs. Additionally, the Arbitrator may award attorneys’ fees and other costs of litigation to the prevailing party.”).

Respondents’ arguments that Makhijani, Continuum, and Nano are not liable for Claimants’ attorney fees and costs are unavailing. It is true Makhijani and Continuum are not signatories to the Operating Agreements. But the Arbitrator long ago ruled “Continuum and its agents are plainly third-party beneficiaries of the Operating Agreements, Plus, it is not and cannot be disputed that Makhijani is an agent of Continuum.” (Rulings on Motions Contesting Arbitrability, p. 7.) Therefore, Makhijani and Continuum are both bound by the terms of the Operating Agreements, including the attorney fee and cost provisions. Continuum is also a party to the Term Sheet, which contains an identical attorney fee and cost provision, and again Makhijani is an agent of Continuum. So, Makhijani and Continuum are both bound by the attorney fee and cost provisions of the Term Sheet. And, as noted above, Nano is liable under the Nano Arbitration Agreement for Claimants’ attorney fees and costs.

Respondents also argue the Motion is premature because, “Claimants have not just failed to show a specific amount of damages incurred, they have utterly failed to show by competent evidence that any damages have been incurred at all” (Makhijani/MOM Opposition, p. 11.) Not so. Again, the Partial Interim Award (and the Partial Final Award) determined Claimants are entitled to restitution, consequential damages, compensatory damages, incidental damages, and punitive damages; the fact of these damages is certain; and some of the amounts are known. Claimant’s expert Spindler calculated these damages at between \$45,011,937 and \$169,845,578, and he estimated the rescission value of the JV’s properties at more than \$200,000,000.

The Makhijani Parties and the MOM Parties argue Spindler’s opinions are defective. (Makhijani/MOM Opposition, p. 12.) But they made similar arguments in opposition to the Claimants’ accounting claim and the Arbitrator rejected them. Besides, it is improper for them to reargue the admissibility, weight, or sufficiency of the damages evidence in this procedural context, particularly in light of the Arbitrator’s findings that they failed to create and maintain adequate books and records for the MOM JV Entities, failed to provide regular financial reporting to Claimants, failed to allow inspection of the books and records, and otherwise actively concealed the very information Claimants needed to better quantify their damages. This intentional wrongdoing by the Makhijani Parties and the MOM Parties will not be rewarded. The Arbitrator also found there is no reliable evidence establishing the fact or amount of the “infusions,” which the Makhijani Parties and the MOM Parties claim as offsets.

B. Claimants’ Lodestar Attorney Fees Are Reasonable

Section 1717 contemplates an award of “reasonable” attorney’s fees and costs. HYMG, Maralan, and MS are seeking a total of \$5,535,673.50 in attorney’s fees, including fees incurred from March 2023 through the present. Each firm has provided declarations and comprehensive spreadsheets containing fee entries describing the work performed and the time expended, and listing the firms’ hourly rates. (Ybarra Decl., Ex. 1; Maralan Decl., Ex. A; Zfaty Decl., Ex. A.)

The fee setting inquiry begins with a lodestar calculation, which involves an analysis of the reasonableness of both the hours expended and the hourly rate charged. (*PLCM Group v. Drexler* (2000) 22 Cal. 4th 1084, 1095 (*PLCM*).) In the lodestar analysis, the Arbitrator may also consider a number of factors as evidence of the value of the services rendered, including but not limited to the nature of the litigation and its difficulty, the skill displayed in presenting claims, the amount sought and the final amount recovered, the fee arrangement between counsel and his or her client, and Claimants’ ultimate successes and failures. (*Ibid.*; see also, *Holguin v. DISH Network LLC* (2014) 229 Cal. App. 4th 1310, 1332 (*Holguin*); and *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 245-46 (Del. 2007) [listing Delaware reasonableness factors].)

The Arbitrator can also adjust the lodestar calculation based on his analysis of the relevant factors. (*Serrano v. Priest* (1977) 20 Cal. 3d 25, 49 [after accepting the lodestar figure as a starting point, “the court then took into consideration various relevant factors, of which some militated in favor of augmentation and some in favor of diminution”]; *Holguin, supra*, 229 Cal. App. 4th at 1332, relying on *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132 [“Adjustment may be made upward or downward depending on the court’s assessment of the fair market value for the particular action at issue.”]; *Concepcion v. Amscan Holdings Inc.* (2014) 223 Cal. App. 4th 1309, 1321 [“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation.”].)

The Arbitrator has broad discretion to determine the reasonableness of a request for attorney fees. (*PLCM, supra*, 22 Cal. 4th at 1096 [“it is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court.”]; see also, *Vella v. Hudgins* (1984) 151 Cal. App. 3d 515, 520 [“The amount to be awarded as attorney’s fees is left to the sound discretion of the trial court. The trial judge is in the best position to evaluate the services rendered by an attorney in his courtroom....”]. Not only is the Arbitrator “the best judge of the value of professional services rendered in his court...,” but he is also entitled to rely on his own personal expertise gained from 15 years as a trial judge and 10 years as an appellate court justice. (*PLCM, supra*, 22 Cal. 4th at 1095.)

Applying these principles, the Arbitrator finds Claimants’ counsel are qualified, skilled and experienced trial lawyers in matters concerning issues similar to those in this case. They have litigated multiple related matters in the Superior Court and with JAMS since March 2023, including considerable discovery disputes. The arbitration culminated in a three-week Hearing with the Arbitrator and extensive post-hearing briefing and closing argument. Counsel achieved an unqualified win for Claimants by securing an accounting, plus the right to a return of the JV properties, restitution, consequential, compensatory, incidental, and punitive damages. Based on Arbitrator’s experience, the hourly rates charged are well within reason for Southern California-based law firms in complex commercial cases. (See *PLCM, supra*, 22 Cal. 4th at 1095 “[t]he reasonable hourly rate is that prevailing in the community for similar work.”)

The Arbitrator further finds the hours billed for performing specific tasks related to asserting Claimants' claims and defending against Respondents' (counter) claims in this matter were justifiable and reasonable. This arbitration comprised a highly contentious dispute between multiple individuals and entities relating to the parties' rights and obligations in a complicated commercial real estate joint venture. Respondents also employed litigation strategies that led to delays and additional costs in the discovery process and a significant extension of the arbitration Hearing itself. (*See* JAMS Rule 24(g) [in determining reasonable fee award, the Arbitrator may consider failure to cooperate in discovery process that results in delay or additional costs].)

Overall, Claimants' lodestar attorney fees are prima facie reasonable and appropriate, subject to the following adjustments.

Nano argues it is not responsible for attorney fees that Claimants incurred before Nano joined this arbitration.⁸ Claimants conceded the point and calculated the percentage of HYMG's fees allocated to the pre-October 11, 2023 period. (Ybarra Decl., ¶ 31; Maralan Decl., ¶ 6.) The post-October 11, 2023 attorney fees for which Nano is jointly and severally liable total \$4,335,269.08, comprised of (i) HYMG: \$4,134,929.95; and (ii) Maralan: \$200,339.13.⁹ These fees have also been redacted to remove those related to the LASC books and records action and other tasks unrelated to this arbitration.

The Arbitrator exercises his broad discretion and declines to otherwise allocate attorney fees between the claims and parties. (*Hill v. Affirmed Housing Group* (2014) 226 Cal. App. 4th 1192, 1197.) That Nano voluntarily agreed to join this arbitration does not mean its liability for fees should be reduced. Nano negotiated and agreed to the attorney fee provisions of the Nano Arbitration Agreement. Nano's argument that its "culpability is relatively minor" ignores the evidence. The Arbitrator found Nano gave substantial assistance to, and acted in concert with, the other Respondents in fraudulently inducing Claimants to enter into the JV at the core of this dispute. So, Nano was found liable for conspiracy to commit and aiding and abetting the commission of the fraudulent inducement by the MOM Parties and the Makhijani Parties.

The Arbitrator rejects all of Respondents' other arguments about the reasonableness of the lodestar attorney fees. As a threshold matter, Respondents have failed to sustain their burden to challenge the specific time entries or hourly rates charged by Claimants' counsel. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal. App. 4th 44, 101 ["When confronted with hundreds of pages of legal bills, trial courts are not required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary. The party opposing the fee award can be expected to identify the particular charges it considers objectionable."].)

⁸ Nano became a party pursuant to the Nano Arbitration Agreement on October 11, 2023.

⁹ All of MS's fees were incurred before October 11, 2023 and Claimants are not seeking any of them from Nano.

As to hourly rates, Nano makes no challenge whatsoever, and the other Respondents challenge only the rates of the HYMG associates - Thomas Rubinsky and Abigail Marion. The Arbitrator rejects this challenge and finds their hourly rates (\$775 in 2023 and \$850 in 2024) are reasonable in the Los Angeles market for attorneys with their experience (both practicing attorneys for more than 7 years as of 2023) and educational and professional background (graduates of Stanford and Columbia law schools; former law clerks for federal district court judges and, in Ms. Marion's case, a Second Circuit judge).

Regarding hours billed, Nano makes no specific challenge and the other Respondents challenge purported "unreasonable staffing" and "duplicative work." They complain: "Here, between March and September 2023, twelve attorneys were staffed on this case.[] Out of the twelve, six attorneys were partners at their respective law firms. There is no good reason for why six partners needed to be involved, especially at the outset of this dispute and before any heavy litigation. Nor is there any good reason for six partners, including two high profile founding partners of HMYG, to bill time on basic research and document review. ... As another example, over a week in April 2023, Mr. Ybarra spent 11.5 hours drafting a straightforward timeline and outline of claims. *Thus, the Arbitrator should make a 50% deduction from the hours billed by the six partners*, Mr. Ybarra, Mr. May, Mr. Zfaty, Mr. Burns, Mr. Taxman, and Ms. Dogmetchi. [¶] ... Naturally, the twelve attorneys staffed on this matter were doing duplicative work. For example, on July 11, 2023, attorneys at all three law firms billed around twenty hours reviewing an opposition to a preliminary injunction. On September 12, 2023, four partners across the three different law firms spent five hours preparing for and participating in a simple status conference. *Any time spent on duplicative work must be deducted from Claimants' requested fees.*" (Makhijani/MOM Opposition, at 13-14 (italics added).)

The Arbitrator finds no unreasonable staffing, and certainly none which would support a 50% reduction in the hours billed by the partners. The first six months of this dispute (March through September 2023) were active, with multiple TROs and other emergency relief motions. And, unlike Allen Matkins, HMYG is a firm with fewer than 20 attorneys. This necessarily requires partners to perform work that larger firms might push down to associates. But partners typically perform that work in fewer hours than it would take an associate, as a result of their experience. So, it is speculation to assume the fees incurred for these tasks would have been lower if performed by associates. Plus, Claimants' trial team was small - two partners and two associates from HMYG, plus Mr. Maralan, attended the Hearing and performed the majority of the legal work. By comparison, Respondents had seven attorneys attend each day of the evidentiary hearing (Messrs. Leipzig, Farrell, Hsu, Cohen, Stepanyan, and DeMeo, as well as Ms. Mortimer), with additional Allen Matkins attorneys also working on the matter.

Likewise, the Arbitrator finds Respondents have not adequately identified any particular unreasonable, duplicative or unnecessary charges to be deducted from Claimants' lodestar fees.

C. Claimants Are Entitled To A Multiplier

Claimants also request a multiplier of 1.5x on the \$5,535,673.50 attorney fees incurred, to compensate for the contingency risk taken by Claimants and their counsel. “California law gives the trial court vast discretion in deciding whether to employ a multiplier and at what level to set it. No established criteria calibrate the precise size and direction of the multiplier, thus implying considerable deference to trial court decisionmaking about attorney fee awards.” (*Pollock v. Kelso* (2025) 107 Cal. App. 5th 1190, 1197-1198 (*Pollock*).)

“In determining whether to apply a multiplier to a lodestar amount, a court should consider all relevant factors, including: ‘(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.’ A court may rely on these factors to increase or decrease the lodestar. Any one factor may be sufficient to apply a positive or negative multiplier.” (*Kennedy Comm’n v. City of Huntington Beach* (2023) 91 Cal. App. 5th 436, 467.)

“The primary purpose of a fee multiplier is to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases.” (*Pollock, supra*, 107 Cal. App. 5th at 1197.) “Here, a key factor was contingent risk. In contingent fee cases, a fee enhancement compensates the lawyer for having taken the case despite the risk of receiving no payment in the event of a loss or the risk of a delayed payment in the event of a victory. (Citation omitted.) The enhancement ‘is intended to approximate market-level compensation for’ cases taken on contingency, ‘which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.’ (Citation omitted.)” (*Sonoma Land Trust v. Thompson* (2021) 63 Cal. App. 5th 978, 986.)

Considering these factors, the Arbitrator concludes a multiplier is warranted here. While Claimants initially retained counsel under an hourly fee arrangement, the evidence shows they were unable to keep up with the fees and costs because the MOM Parties and the Makhijani Parties cut them out of any income generated by the JV for nearly two years. These actions were designed, at least in part, to prevent Claimants from being able to litigate this case. As a result, Claimants were forced to secure litigation funding from a third-party funder, and their counsel was required to convert their engagement to a hybrid hourly-contingent fee agreement. The third-party funder is now entitled to recover the amount paid by the funder, plus a substantial contingency bonus on that amount. (Honarkar Decl. ¶ 7.) Further, Claimants’ counsel incurred (and still bears) the risk they would not be paid for much of their work in this matter, which was fiercely litigated and required substantial attorney time. Indeed, HMYG alone is currently owed almost \$2 million in outstanding attorney fees, and that amount has been due and payable since before the closing of post-Hearing briefing. (Ybarra Decl. ¶ 9.)

For these reasons, the Arbitrator applies a multiplier of 1.5x on the \$5,535,673.50 attorney fees incurred, which brings the total attorney fee award to \$ 8,303,510.25. The MOM Parties and the Makhijani Parties are jointly and severally liable for 100% of this amount.

However, the Arbitrator concludes a multiplier is not warranted against Nano. As Nano argues, and Claimants do not dispute, unlike the MOM Parties and the Makhijani Parties, Nano did not control the JV or the income generated by the JV, did not contest arbitrability, brought no claims against Honarkar, and had no role in any discovery delays or improprieties. There is thus no basis for applying a multiplier against Nano.

The Arbitrator rejects the other Respondents' arguments in opposition to a multiplier. While HMYG's engagement agreement is privileged (Bus. & Prof. Code § 6149), Claimants submitted evidence of the contingency component. (Ybarra Decl. ¶ 9.) That evidence is sufficient. Regarding risk of non-payment, the evidence shows HMYG is owed almost \$2 million in fees and costs, and most of this amount has been owed since June 2024. (Ybarra Decl. ¶¶ 8-9.) Absent prevailing and collecting from Respondents, HMYG would have no plausible source from which to recover these amounts. Finally, the Partial Interim Award demonstrated the MOM Parties and the Makhijani Parties caused the financial harm that necessitated a litigation funder and contingent fee arrangement. Their attempt to relitigate those issues here amounts to an unpersuasive if not improper sub silentio request for reconsideration.

D. Claimants' Costs Are Reasonable

The Operating Agreements, the Term Sheet, and the Nano Arbitration Agreement all authorize the Arbitrator to award costs to the prevailing party. Pursuant to these agreements and Code of Civil Procedure section 1033.5 ("Section 1033.5"), Claimants seek \$893,916.06 in costs relating to JAMS fees and costs, discovery vendors, courier and postal expenses, court reporter and hearing transcript fees, deposition reporter and videographer fees, trial and deposition exhibit expenses, trial tech expenses, service of process fees, printing expenses, filing fees, and after-hours HVAC costs, as well as expert fees for two of Claimants' experts and expert fees charged by two of Respondents' experts for deposition. (Ex. 315, § 19.10; Ybarra Decl., Ex. 18, § 2.)


Ultimately, Section 1033.5 provides discretion in determining what is a reasonable cost award, as do JAMS Rules 24(f) and (g). While Section 1033.5 does not contemplate expert fees, where sophisticated parties have contracted for the recovery of costs, a prevailing party is entitled to costs beyond those specified in section 1033.5, including expert fees. (*Arnst Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal. App. 4th 464, 491-492 [sophisticated parties may choose a broader standard authorizing recovery of reasonable litigation costs]; *Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC* (2010) 185 Cal. App. 4th 1050, 1056-66 [expert witness fees recoverable based on contractual provision].)

Having reviewed the supporting declarations, and exercising discretion, the Arbitrator finds the \$893,916.06 in costs requested by Claimants are reasonable. The Arbitrator rejects Nano's argument that Section 1033.5(b)(1) precludes the recovery of expert fees as costs.

III. SUMMARY AND CONCLUSION

The Motion is granted and Claimants are awarded \$8,303,510.25 in attorney fees (\$5,535,673.50 x 1.5), plus \$893,916.06 in costs, for a total of \$9,197,426.31. The MOM Parties and the Makhijani Parties are jointly and severally liable for the entire \$9,197,426.31 total. But of the \$9,197,426.31 total, Nano is jointly and severally liable for only \$5,229,185.14, which is comprised of \$4,335,269.08 in (post-October 11, 2023) attorney fees, plus \$893,916.06 in costs. This ruling resolves all attorney fee and cost claims presented by the Motion. All arguments not expressly discussed are either unnecessary to this ruling or have been considered and rejected.

DATED: May 23, 2025



Hon. David A. Thompson (Ret.)

EXHIBIT 4



JUDICIAL ARBITRATION AND MEDIATION SERVICES

MOHAMMAD HONARKAR and 4G
WIRELESS, INC., individually and on behalf of
MOM AS INVESTCO LLC, MOM BS
INVESTCO LLC, and MOM CA INVESTCO
LLC,

Claimants,

vs.

MAHENDER MAKHIJANI; CONTINUUM
ANALYTICS, INC.; MOM AS INVESTOR
GROUP LLC; MOM BS INVESTOR GROUP
LLC; MOM CA INVESTOR GROUP LLC;
MOM CA MANAGER LLC; MOM BS
MANAGER LLC; MOM AS MANAGER LLC;
NANO BANC; and DOES 1-100, inclusive,

Respondents,

and

MOM AS INVESTCO, LLC, a Delaware limited
liability company; MOM BS INVESTCO, LLC, a
Delaware limited liability company; MOM CA
INVESTCO, LLC, a Delaware limited liability
company; and DOES 1-10, inclusive,

Nominal Respondents.

JAMS REFERENCE NO.
5220003126

PRELIMINARY¹ EXPERT REPORT OF Michael Spindler, CPA², CFE, CFF, ABV, CAMS May 20, 2024

¹ We anticipate receiving key documents that have not yet been produced or just recently produced but we have not had an opportunity to review – namely, a full set of financial statements, native Quickbooks data for the various entities, bank account statements (some account statements were only partially provided and/or were redacted), and fact witness depositions (which have yet to be taken). Accordingly, this report is preliminary and subject to revision as additional information is made available.

² Licensed in New York, Arizona, California, Nevada, Utah, and Hawaii.

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I. INTRODUCTION

1. GlassRatner Advisory & Capital Group LLC, dba B. Riley Advisory Services (“**B. Riley Advisory**”) was retained to preform forensic accounting services under the direction of Halpern May Ybarra Gelberg LLP (“**Counsel**”), on behalf of Mohammad Honarkar in January of 2024. More specifically, we were retained to calculate damages for an arbitration in connection with a dispute between Mr. Honarkar and 4G Wireless, Inc. (collectively, “Mr. Honarkar” or the “Claimants”) and Mahender Makhijani, Continuum Analytics, Inc., MOM CA Investor Group, LLC, MOM BS Investor Group, LLC, MOM AS Investor Group, LLC, MOM CA Manager LLC, MOM BS Manager, LLC and MOM AS Manager LLC and Nano Banc (collectively, “Respondents”) and MOM AS Investco, LLC, MOM BS Investco, LLC and MOM CA Investco, LLC (collectively, “**Nominal**”).

Respondents” or “MOM LLCs”) as more fully described in the First Amended Statement of Claim filed on October 13, 2023 (“**Pleading**”).³

2. This report summarizes my analysis of the documents set forth in **Appendix 1**. My work was performed in accordance with the American Institute of Certified Public Accountants Statement on Standards for Forensic Services.
3. In order to perform this engagement, I relied on other B. Riley Advisory professionals with experience in financial analysis, economic damages, business valuation, and forensic accounting, which worked under my direct supervision and control. I have relied on the work of the team to support my review of information related to this matter, and references to “I,” “our” and “we” recognize this reliance.
4. Any minor differences in amounts calculated or referenced in supporting documentation or the Schedules and Tables to this report are due to rounding.
5. This report is issued for purposes of this arbitration and is not to be used for any other purpose.
6. The claims referenced here and summarized in Section III are included herein for background only and I do not render an opinion on liability. For purposes of my calculations, I have assumed liability of the Respondents.
7. We anticipate that we may receive key documents that have not yet been produced or just recently produced but we have not had an opportunity to review – namely, a full set of financial statements, native Quickbooks data, bank account statements (some account statements were only partially provided), and fact witness depositions (which have not yet been taken). Accordingly, this report is preliminary and subject to revision as additional information is made available, including in connection with the submission of a Supplemental Expert Report.
8. I reserve the right to update, revise and/or supplement my analysis, opinions and this report to the extent additional relevant information becomes available to me. I anticipate that I will also consider the opinions of Respondents’ experts and may issue a report thereon.

³ Nano Banc is also a Respondent in the First Amended Statement of Claim filed October 13, 2023 and may be liable for, *inter alia*, a breach of contract claim for entering into a \$20M loan secured by the properties with the MOM LLCs but providing the loaned proceeds directly to Continuum Analytics, Inc., as discussed in this Report. Nano Banc’s damages on this claim amount to \$20 million owed to the MOM LLCs. Nano Banc may also be liable for aiding and abetting the Claims made herein against the other Respondents, in which case Nano Banc may be responsible for the same damages set forth herein for the other Respondents.

II. PROFESSIONAL BACKGROUND

9. I am a Certified Public Accountant (licensed in New York, Arizona, California, Nevada, Utah, and Hawaii). I am Certified in Financial Forensics and Accredited in Business Valuation (both issued by the American Institute of Certified Public Accountants). I am a Certified Fraud Examiner (issued by the Association of Certified Fraud Examiners). I am a Certified Anti-Money Laundering Specialist (issued by ACAMS). I graduated from the State University of New York at Albany with a Bachelor of Science degree in Accounting and a minor degree in Economics in 1981.
10. I have over 40 years of experience in auditing and forensic accounting, including complex disputes in litigation, forensic accounting investigations and business fraud investigations across a wide range of industries.
11. I have provided expert testimony in bench trials, jury trials, and arbitration proceedings. I have conducted numerous investigations of public company financial statement fraud and other matters and have presented my findings to special committees and various government agencies on behalf of clients, including the Department of Justice, Federal Bureau of Investigation, Internal Revenue Service, and the Office of Thrift Supervision.
12. My clients include law firms, corporations, individuals, government agencies, and non-profit organizations. I am currently a Senior Managing Director in the Los Angeles office of B. Riley Advisory Services and I have held senior leadership positions with several forensic accounting firms. I was also a Partner at two national public accounting firms. I have served as a Professional Practice Director for forensic accounting matters. I have authored or co-authored a number of publications on fraud-related topics and developed and presented seminars and courses on forensic accounting and litigation support issues.
13. I am a past President of the Los Angeles Chapter of the California Society of CPAs ("CALCPA"), an organization of, at that time, approximately 11,000 members. I am also a past President of the Los Angeles Chapter of the Association of Certified Fraud Examiners. I have also served on CALCPA Council (a governing body of the State organization) and on the Board of Trustees of the CALCPA Education Foundation.
14. I have provided a listing of expert testimony during the past 4 years, which is summarized and attached as **Appendix 2**. I have not authored any publications during the past 10 years.

15. The hourly rates charged by B. Riley Advisory for professional services provided in this matter range from \$425 to \$695, and my time has been billed at \$695 per hour. B. Riley Advisory's compensation is not contingent upon the outcome of this matter.

III. BACKGROUND⁴

16. Mohammad Honarkar is a real estate developer and entrepreneur based in Laguna Beach, California who spent many years building an extensive real estate portfolio of properties in Southern California. Mr. Honarkar's portfolio included many hotels and restaurants in the affluent Laguna Beach area of Southern California. In the spring of 2021, due to certain financial obligations, Mr. Honarkar sought an infusion of capital to his real estate portfolio. Mr. Honarkar approached Nano Banc, a commercial bank based in Irvine, California, for a capital infusion; Nano Banc referred him to Mahender Makhijani, who had a close relationship with Nano Banc and its shareholders⁵. Mr. Honarkar and Mr. Makhijani, through certain corporate entities, ultimately formed three limited liability companies (hereinafter, the MOM LLCs, defined below). As part of the transaction, Mr. Honarkar contributed his membership interests in certain limited liability companies holding title to his real estate portfolio, and Mr. Makhijani, either directly or through Continuum or other corporate entities, was to contribute at least \$30 million in capital and arrange for the refinancing of existing debt on Mr. Honarkar's properties.⁶ After the closing of the transaction, the MOM LLCs would own all membership interests in the entities contributed by Mr. Honarkar, with Messrs. Honarkar and Makhijani, through their corporate entities, owning the membership interests in the MOM LLCs. Importantly, the distribution of profits and losses from the MOM LLCs varied by contributed entity. Mr. Makhijani's entities were to participate in the financial earnings of a real estate project *only* if he contributed capital to that specific real estate project, meaning Mr. Makhijani's participation was contingent on contributions and applicable only on a project-by-project basis.⁷

17. The MOM LLCs are comprised of three separate limited liability companies -- MOM CA Investco, LLC ("**MOM CA**"), MOM AS Investco, LLC ("**MOM AS**"), and MOM BS

⁴ This section contains background information for context and does not contain any opinions.

⁵ See First Amended Statement of Claim filed October 13, 2023, page 2.

⁶ The capital contribution was originally supposed to be \$35 million, according to the parties' Term Sheet dated May 2021. It was modified to \$30 million in the Operating Agreements dated June 8, 2021.

⁷ See First Amended Statement of Claim filed October 13, 2023, page 2.

Investco, LLC (“**MOM BS**”). Each of the MOM LLCs is governed by a separate Operating Agreement. Each of the Operating Agreements is dated June 8, 2021 and contains similar terms.⁸ Prior to the joint venture, Mr. Honarkar was party to a written Management Agreement dated January 1, 2021, entitling Mr. Honarkar to manage certain properties owned by limited liability companies for a ten-year term in exchange for a management fee.⁹ The membership interests in these limited liability companies were later contributed to the MOM LLCs.

18. Instead of providing the agreed-upon \$30 million initial capital contribution in cash, Mr. Makhijani caused the MOM LLCs themselves to borrow \$20 million from Nano Banc. Mr. Makhijani then caused the \$20 million in loan proceeds to be paid to his company, Continuum Analytics, Inc. (“**Continuum**”). Continuum, in turn, used those funds to make \$20 million of the required \$30 million initial capital contribution to the MOM LLCs. This \$20 million loan was secured by properties owned by certain limited liability companies that Mr. Honarkar was contributing to the MOM LLCs.¹⁰ Therefore, not only did Mr. Makhijani not contribute \$20 million in capital to the MOM LLCs, but he also leveraged properties to be included in the joint venture with an interest-bearing loan. Importantly, the loan was issued and the properties were encumbered on June 7, 2021, a day before the limited liability companies owning the real properties at issue were contributed to the MOM LLCs, meaning Mr. Makhijani encumbered these properties before he ever had any ownership interest in them, directly or indirectly.¹¹ As to the remaining \$10 million that Mr. Makhijani was required to contribute to the MOM LLCs, Mr. Honarkar is not aware of the source of the funds. The \$10 million appears to have been contributed by Continuum (according to the Escrow Closing Statement), but Mr. Honarkar is not aware of how Continuum obtained the \$10 million. Moreover, Continuum was paid approximately \$4 million back from the escrow account used for the refinancing of Mr. Honarkar’s debt. So, at most, and assuming that Continuum’s \$10 million contribution was not also improperly obtained, Mr. Makhijani contributed a total of only \$6 million of the required \$30 million capital contribution specified in the Operating Agreements.

⁸ See First Amended Statement of Claim filed October 13, 2023, Exhibits 2-4.

⁹ See First Amended Statement of Claim filed October 13, 2023, Exhibit 1.

¹⁰ See NANOBANC-000246.

¹¹ See Letter to Nano Banc from Halpern May Ybarra Gelberg, dated August 28, 2023 (HONARKAR-147254).

19. Furthermore, Mr. Makhijani has allegedly continued to breach the terms of the Operating Agreements from June 8, 2021 and the Management Agreement from January 1, 2021.¹² Instead of arranging the refinancing of debts on the properties, almost immediately following the formation of the MOM LLCs, Mr. Makhijani leveraged the properties with substantial loans, often without Mr. Honarkar's knowledge or consent. Further alleged wrongdoing by Mr. Makhijani includes refusing the sale of one property that would have produced significant proceeds and instead refinancing the property and incurring more debt, and the selling of tenant-in-common ("TIC") interests in the real estate properties without Mr. Honarkar's knowledge or consent. Mr. Honarkar alleges that after his discovery of the wrongdoings by Mr. Makhijani, Mr. Makhijani began a retaliatory campaign of retribution which included acts of physical intimidation and violence, resulting in the closure of some properties by the City of Laguna Beach. Additionally, Mr. Makhijani has caused Statements of Information to be filed with the Secretary of State, wrongfully altering the designated agents for service of process for several of Mr. Honarkar's entities.¹³
20. As noted in the Introduction above, Mr. Honarkar filed the First Amended Statement of Claim in October of 2023. The Complaint alleges multiple causes of action: i) fraudulent inducement, ii) breach of contract (against the MOM entities), iii) breach of implied covenant of good faith and fair dealing, iv) accounting, v) declaratory relief, vi) conversion, vii) unjust enrichment, viii) violation of California Penal Code Section 496(c), ix) forcible entry, x) forcible detainer, xi) conspiracy to commit fraudulent inducement, xii) aiding and abetting fraudulent inducement, and xiii) breach of contract (against Nano Banc).¹⁴

IV. DAMAGES

21. Based on the allegations set forth above, Mr. Honarkar has been financially damaged by the actions of the Defendants. Mr. Honarkar was allegedly fraudulently induced to enter into the joint venture agreements by Mr. Makhijani, who promised to make a \$30 million capital contribution to the MOM LLCs but ultimately failed to do so and

¹² See First Amended Statement of Claim filed October 13, 2023, Exhibits 1-4.

¹³ See First Amended Statement of Claim filed October 13, 2023, pp. 8-23.

¹⁴ See First Amended Statement of Claim filed October 13, 2023, pp. 23-37.

apparently had no intent of doing so.¹⁵ Mr. Makhijani allegedly has continued to financially harm Mr. Honarkar through various other financial abuses of the joint venture.

22. The Statement of Claim sets forth various prayers for relief based on the causes of action set forth therein. These include: i) rescission of the joint venture enabling Mr. Honarkar to return to a pre-joint venture position, ii) compensatory damages and iii) derivative damages on behalf of the joint ventures. Rescission damages would entail an unwinding of the joint venture to return Mr. Honarkar to the position he was in prior to the joint venture or providing compensation for the economic impact of entering into the joint venture.
23. Rescission of the joint venture would require the return of 100% of the membership interests in the contributed entities to Mr. Honarkar. This assumes, of course, that the contributed entities continue to own the real property assets that they owned as of June 8, 2021--when the membership interests in the contributed entities were transferred from Mr. Honarkar to the MOM LLCs. (I am informed that, for some of the Subsidiary Entities, there were sales of properties after the formation of the joint venture. In such circumstances, Mr. Honarkar would be entitled to compensation for the proceeds of such sales.) Under a rescission scenario, equalizing payments would also need to be considered for the damages caused by Respondents' other wrongful acts beyond return of the membership interests, such as i) interest on the loan taken by Respondents in lieu of the capital contribution, ii) funds from the TICs sold, iii) funds from the many loans leveraged on properties in the joint venture, and iv) losses due to late fees and penalties on unpaid property tax.
24. Alternatively, we have calculated economic damages to both Mr. Honarkar and, derivatively, to the MOM LLCs. The damages as a result of the breach of contract and fraudulent inducement are comprised of i) lost value to Mr. Honarkar for the properties he contributed to the MOM LLCs, ii) lost profits damages, which include unpaid management fees (to Mr. Honarkar), iil) damages resulting from the failure to make the required initial capital contribution and to instead incur debt to fund the obligation, including the loan value and interest from the loan, iv) funds from the TICs sold without

¹⁵ Note this capital contribution was initially set at \$35 million, see Term Sheet dated May 24, 2021 (First Amended Statement of Claim, filed October 13, 2023, Exhibit 1), but was lowered to only \$30 million in the subsequent Operating Agreements (First Amended Statement of Claim, filed October 13, 2023, Exhibits 2-4).

Mr. Honarkar's approval, v) funds from the many loans leveraged on properties in the joint venture, and vi) losses due to late fees and penalties on unpaid property taxes.

25. Therefore, we discuss three overall scenarios of damages in this matter: i) a rescission scenario with the return of the membership interests in the contributed entities to Mr. Honarkar and equalizing payments for other damages caused by Respondents, ii) derivative damages for breach of contract on behalf the MOM LLCs, and iii) damages suffered by Mr. Honarkar on account of Respondents' alleged fraud. The damages are summarized in **Schedule 1**.

26. The properties and entities at issue within the MOM LLCs are shown in **Chart 1**¹⁶:

Chart 1

MOM Investco	Subsidiary Entities
MOM AS	Retreat at Laguna Villas, LLC
MOM AS	Sunset Cove Villas LLC
MOM AS	Duplex at Sleepy Hollow, LLC
MOM AS	Cliff Drive Properties DE, LLC
MOM AS	694 NCH Apartments LLC
MOM AS	Heisler Laguna LLC
MOM BS	891 Laguna Canyon Road, LLC
MOM BS	777 At Laguna, LLC
MOM BS	Laguna Art District Complex, LLC
MOM BS	Laguna Festival Center, LLC
MOM CA	The Masters Building, LLC
MOM CA	689 S. Coast Hwy, LLC
MOM CA	837 Park Ave, LLC
MOM CA	Laguna HI, LLC
MOM CA	Laguna HW, LLC
MOM CA	314 S. Harvard DE, LLC
MOM CA	4110 W. 3 rd St. DE, LLC
MOM CA	Tesoro Redlands, LLC
MOM CA	Cliff Village, LLC
MOM CA	Hotel Laguna, LLC
MOM CA	Tustin Retail Properties, LLC
MOM CA	Aryabhata Group, LLC

¹⁶ See 2021 K1s for MOM AS Investco, LLC (MOMRESP_00009078), MOM BS Investco, LLC (MOMRESP_00009238), and MOM CA Investco, LLC (in draft, HONARKAR-029478). MOM CA's 2021 K1 listed other entities that are not believed to be included. This list refers to these as Subsidiary Entities, although some are referred to as "Projects" in the Operating Agreements (see Exhibits 2-4, First Amended Statement of Claim, filed October 13, 2023). The entities in Chart 1 will hereinafter be referred to as "Subsidiary Entities" or "Entities". Note that there are other entities listed in Exhibit C to the Asset Contribution Agreement (see Exhibit 4, First Amended Statement of Claim, filed October 13, 2023) as being contributed to MOM CA, but the parties dispute whether those entities were, in fact, contributed entities. Additionally, there is at least one entity—8871 Research Drive, LLC—that is not listed in the Asset Contribution Agreement but nonetheless may have provided assets to Respondents. To the extent any of these other entities are deemed to have been included in MOM CA Investco, LLC, then they should be returned to Mr. Honarkar in a rescission scenario (Scenario 1 in this Report), or, if properties have already been sold, then compensation for those sales.

27. Honarkar is party to a Management Agreement with Retreat at Laguna Villas, LLC, Sunset Cove Villas, LLC, Duplex at Sleepy Hollow, LLC, Laguna HI, LLC, and Laguna HW, LLC. The only properties with the “project” designation (for which Mr. Makhijani was to make a specified contribution and thus be entitled to 50% of the distributions) is Hotel Laguna, LLC and Newport Crossing (a subsidiary of Aryabhata Group, LLC).

A. Scenario One: Rescission with Return of Properties Plus Equalizing Payments

28. As discussed above, one relief measure would be rescission of the formation of the joint venture, an “unwinding” of the deal to put Mr. Honarkar into the same position he was in prior to the joint venture. The rescission would entail reverting ownership of 100% of the membership interests in the Subsidiary Entities listed in in **Chart 1** (excluding Aryabhata Group, LLC, which was formed after the joint venture) back to Mr. Honarkar. This assumes, of course, that the Subsidiary Entities remain the owners of the same real property interests that they owned at the time of the formation of the MOM LLCs on June 8, 2021. As part of this, Mr. Honarkar would return the valid, reasonable, and necessary expenditures made by Respondents on these Subsidiary Entities in the period June 8, 2021 to the time of rescission (“Reimbursements”).
29. To calculate monies owed to Respondents as “Reimbursements,” we reviewed financial statements for all entities¹⁷ and summed items from the account “Due to Continuum” for the period from June 8, 2021 through September 30, 2022. These items appear to be expenditures paid by Respondents on behalf of the entities.¹⁸ Based on the documents we have been provided, the total amount of Reimbursements due to the Respondents, assuming the expenses were legitimate and can be substantiated by Respondents and are not offset by other money already paid to Continuum from the MOM LLCs or Subsidiary Entities, in a rescission scenario is **\$17,645,313**. See **Schedule 2** for a summary.

¹⁷ See General Ledgers and/or Balance Sheets for all entities described in Chart 1 for the period following the joint venture, starting on 6/8/21, through the most recent available financials, 9/30/22. Statements were provided for 2023, but they lacked detail and were missing the bases (accrual/ cash) on which they were prepared.

¹⁸ These amounts appear in the General Ledgers but are still subject to additional proof.

30. In a rescission scenario, Honarkar would not be responsible for the \$20,000,000 debt to Nano Banc¹⁹, the proceeds of which were deposited into Continuum Analytics, Inc.'s bank account. However, because the \$20 million debt now encumbers real property owned by entities whose membership interests will be returned to Honarkar in the rescission scenario, Honarkar is entitled to an offset for the monetary loss caused by those encumbrances, which did not exist but for the formation of the parties' joint venture.
31. In a rescission scenario, Mr. Honarkar would reimburse the amount of Capital Contribution possibly contributed to the Subsidiary Entities, **\$6,003,605**, which is the amount of the \$10 million portion of Respondents' purported Capital Contribution less the \$3,996,395 refunded to the Respondents out of the escrow used for the Loancore refinance.²⁰
32. Therefore, the rescission scenario would include transferring the ownership of 100% of the membership interests in the Subsidiary Entities listed in **Chart 1** (with the sole exception of Arybhata Group, LLC, which was formed after the MOM LLCs) back to Mr. Honarkar, with Mr. Honarkar reimbursing Continuum **\$17,645,313 and \$6,003,605**. See **Chart 2** for a summary.

Chart 2

RESCISSION SCENARIO - PROPERTIES RETURNED		
Damage Element	Net Present Value of Cash Flows	Reference
RESCISSION		
Properties Returned	*****Properties*****	
Less:		
Reimbursements to Continuum	\$ 17,645,313	<i>Schedule 2</i>
Capital Contribution	\$ 6,003,605	<i>Schedule 2</i>
TOTAL RESCISSION VALUE (in addition to the return of the Properties to MH)	\$ (23,648,918)	

33. Additionally, under the rescission scenarios, Mr. Honarkar would be owed equalizing payments to compensate him for alleged wrongdoing that occurred due to the actions of the Respondents. These equalizing payments include compensation for i) interest

¹⁹ See Promissory Note NANOBANC-000245.

²⁰ See MOMRESP_00002833.

on the loan taken by Respondents in lieu of the capital contribution, as well as compensation for the harm caused by that loan continuing to encumber Honarkar's properties, ii) funds from the TICs sold without Mr. Honarkar's approval, iii) funds from the many loans leveraged on properties in the joint venture by Respondents²¹, and iv) losses due to late fees and penalties on unpaid property tax.

Interest on the \$20M Loan

34. Firstly, as discussed above, the terms of the Operating Agreements required Mr. Makhijani to make an initial capital contribution of \$30 million. However, the \$20 million transfer was actually the proceeds of a loan taken out by the MOM LLCs themselves. Continuum took the proceeds of this loan for itself and used it to purport to make its capital contribution of \$20 million. The MOM LLCs were encumbered for this debt with Deeds of Trust, despite not having received the proceeds of the loan, on properties owned by The Masters Building, LLC, 689 S. Coast Hwy, LLC, Laguna HI, LLC, and Laguna HW, LLC. The loan was issued by Nano Banc on June 7, 2021, a day prior to the formation of the MOM LLCs, indicating that when Mr. Makhijani signed the Operating Agreements on June 8, 2021, he did not intend to make the required capital contribution.²²
35. In other words, not only did Mr. Makhijani fail to make his capital contribution of \$20 million, but he also burdened the joint venture with a liability placed on the properties. In addition, the loan's interest amounts incurred are also damages, since they would not have been incurred, but for the failure to contribute the required \$20 million in capital. According to the note, all interest plus the principal is due on June 7, 2024, though I understand this date was subsequently extended by Nano Banc and Respondents.²³ Interest accrued through January 19, 2024 totaled \$3,028,923.²⁴ Keeping interest rates static from January 19, 2024 throughout the end of the loan period of June 7, 2024, we calculated the remaining interest owed at \$770,057, for a total interest amount on the \$20 million loan of **\$3,798,980**. See **Schedule 5** for a summary. Of course, if the loan due date has been extended, the total interest amount of the loan would be higher.

²¹ Alternatively, the Deeds of Trust can be removed from the properties.

²² See Letter to Nano Banc from Halpern May Ybarra Gelberg, dated August 28, 2023 (HONARKAR-147254).

²³ See Promissory Note NANOBANC-000245 and MOMRESP_00084876.

²⁴ See NANO_04206-8.

Funds from TICs Sold without Mr. Honarkar's Approval

36. Mr. Makhijani also sold tenant-in-common interests in at least two properties without the knowledge or consent of Mr. Honarkar. We have been unable to identify the proceeds of the sales in the accounts of the MOM LLCs and presume the proceeds went to the Respondents, unless shown otherwise. One TIC interest in a property, Hotel Laguna, LLC, was sold to Jaachak, LLC, an entity related to an executive for Mr. Makhijani's corporate entity, for \$1,036,195 in April of 2022.²⁵ Damages from this TIC sold are therefore **\$1,036,195**, and Respondents are required to pay this amount to Mr. Honarkar, as the sole owner of Hotel Laguna, LLC, in the rescission scenario.²⁶
37. Mr. Makhijani proceeded to enact another TIC sale in December 2022, this time with Laguna HI, LLC, which, according to the Operating Agreement²⁷, required the consent of Mr. Honarkar before selling. The TIC was sold to Cheema & Ghuma Properties, LLC on December 30, 2022 for \$4,066,500.²⁸ Damages from this TIC sold are therefore \$4,066,500 and Respondents are required to pay this amount to Mr. Honarkar, as the sole owner of Laguna HI, LLC in the rescission scenario.
38. The damages from TIC interests being sold without Mr. Honarkar's consent are, based solely on the sales identified thus far, **\$5,102,695**. See **Schedule 6** for a summary.

Post-JV Loans

39. Subsequent to the formation of the joint venture, Mr. Makhijani proceeded to take out substantial loans on the real estate assets owned by the MOM LLCs, often without Mr. Honarkar's knowledge or consent. The loans are secured by the Deeds of Trust of various properties of the MOM LLCs. A summary of certain of the loans taken out after the formation of the MOM LLC can be seen below in **Chart 3**, and total **\$136,565,000**. These proceeds are owed to Mr. Honarkar²⁹. See **Schedule 7** for a summary.³⁰

²⁵ See Declaration of M. Honarkar ISO Receiver App., May 17, 2023, Exhibit 6.

²⁶ These TICs may be returned for the cash value, and in such a case, would not amount to damages.

²⁷ See First Amended Statement of Claim filed October 13, 2023, Exhibit 4.

²⁸ See Declaration of M. Honarkar ISO Receiver App., May 17, 2023, Exhibit 7 and NANO_27313 p. 10.

²⁹ Alternatively, the Deeds of Trust can be removed from the properties and the debt cancelled.

³⁰ Note that the Deeds of Trust related to the \$175M coastline loan is not included here as that loan has, according to Respondents, not been drawn on. If this is not correct, the debt would need to be included. Additionally, there may

Chart 3

Post-JV Loans			
Property/ies	Lender	Date	Loan Amount
Tesoro Redlands, LLC	Nano Banc	7/1/2021	\$ 1,000,000
The Masters Buildings, LLC	Cantor Group IV LLC	10/26/2021	\$ 11,000,000
Laguna HW, LLC	Cantor Group IV LLC	10/26/2021	\$ 8,300,000
Tustin Retail Properties	Cantor Group IV LLC	10/26/2021	\$ 2,100,000
Laguna HW, LLC	Loan Oak Fund, LLC	12/28/2021	\$ 3,500,000
The Masters Buildings, LLC	Loan Oak Fund, LLC	12/28/2021	\$ 5,500,000
Laguna HW, LLC, The Masters Buildings, LLC	Qualfax, Inc. c/o RTI Properties, Inc.	12/28/2021	\$ 3,000,000
Laguna HI, LLC	Cantor Group IV LLC	2/11/2022	\$ 18,175,000
Tesoro Redlands, LLC	Preferred Bank	2/24/2022	\$ 11,400,000
Laguna HW, LLC	Cantor Group V LLC	5/2/2022	\$ 10,000,000
Laguna Arts District Complex, LLC	Cantor Group IV LLC	11/21/2022	\$ 16,500,000
Hotel Laguna, LLC	Banc of California	11/4/2022	\$ 27,000,000
The Masters Buildings, LLC	PMF CA REIT, LLC	8/31/2023	\$ 6,540,000
Laguna HI, LLC	Wilshire Quinn Income Fund, LLC	11/15/2023	\$ 12,550,000
TOTAL			\$ 136,565,000

Late Fees and Penalties on Unpaid Property Tax

40. Due to Mr. Makhijani's mismanagement of the properties, many of the properties within the MOM LLCs have accrued unpaid property taxes. The unpaid property tax amounts are liabilities owed by the Joint Ventures but the late fees and penalties due to nonpayment or late payments are amounts owed to Mr. Honarkar as damages due to mismanagement. The known late fees and penalties on the properties as of May 9, 2024 total **\$382,508**.³¹ See **Schedule 9** for a summary.
41. Equalizing payments for alleged wrongdoings by Respondents total **\$145,849,183**. Thus, in a rescission scenario with the return transferring the ownership of 100% of the membership interests in the Entities listed in **Chart 1** back to Mr. Honarkar, the damages (which include return of the LLC interests) total **\$122,200,265**, which is the value of equalizing payments less reimbursements to the Respondents. See **Chart 4** for a summary.

be additional loans that have not been included in this list for which Respondents are responsible, in which case the chart will be supplemented.

³¹ See HONARKAR-186618 ("Past Due Secured Property Taxes 2022-2024 as of 05.09.2024.pdf").

Chart 4

RESCISSION SCENARIO - PROPERTIES RETURNED		
Damage Element	Net Present Value of Cash Flows	Reference
RESCISSION		
Properties Returned	*****Properties*****	
Less:		
Reimbursements to Continuum	\$ 17,645,313	Schedule 2
Capital Contribution	\$ 6,003,605	Schedule 2
TOTAL RESCISSION VALUE (in addition to the return of the Properties to MH)	\$ (23,648,918)	
EQUALIZING PAYMENTS		
Damages Resulting from Capital Contribution		
Interest on Loan	\$ 3,798,980	Schedule 5
Total Damages Resulting from Capital Contribution	\$ 3,798,980	
TIC Sold	\$ 5,102,695	Schedule 6
Post-JV Loans	\$ 136,565,000	Schedule 7
Late Fees and Penalties on Property Tax	\$ 382,508	Schedule 9
TOTAL EQUALIZING PAYMENTS	\$ 145,849,183	
TOTAL DAMAGES (in addition to the return of the Properties to MH)	\$ 122,200,265	

B. Scenario Two: Derivative Damages for Breach of Contract to MOM LLCs at 100% Ownership

42. Under a derivative claim, the MOM LLCs are owed damages for Respondents' alleged breach of contract and breach of implied covenant of good faith and fair dealing. The damages as a result of the breach of contract are comprised of i) damages resulting from the failure to make the required initial capital contribution and to instead cause the MOM LLCs to incur debt to fund the obligation, including the loan value and interest from the loan, ii) funds from the TICs sold without Mr. Honarkar's approval and not paid to the MOM LLCs, iii) funds from the many loans leveraged on properties in the joint venture, and iv) losses due to late fees and penalties on unpaid property tax. In this scenario we consider these damages as being owed 100% to the MOM LLCs.

Damages Resulting from Mr. Makhijani's Failure to Contribute Capital of \$20 Million

43. As discussed above, the terms of the MOM LLC Operating Agreements required Mr. Makhijani, through his corporate entities, to make an initial capital contribution to the MOM LLCs in the amount of \$30 million. As set forth above, Mr. Makhijani appears to have made an initial capital contribution of, at most, only \$6 million to the MOM LLCs.³²
44. Not only did Mr. Makhijani fail to make his capital contribution of \$30 million, but he also burdened the MOM LLCs with a \$20 million liability to Nano Banc that was secured by Deeds of Trusts on various properties. The loan's interest amounts incurred are also damages, since they would not have been incurred, but for the failure of Mr. Makhijani to make the required initial capital contribution. According to the note, all interest plus the principal is due on June 7, 2024.³³ Interest accrued through January 19, 2024 totaled \$3,028,923.³⁴ Keeping interest rates static from January 19, 2024 throughout the end of the loan period of June 7, 2024, we calculated the remaining interest owed at \$770,057, for a total interest amount on the \$20 million loan of **\$3,798,980**. The damages related to this transaction are therefore the loan amount of **\$20,000,000**, the interest amount of **\$3,789,980**, and the **\$3,996,395** that was paid to Continuum out of the escrow used for the Loancore refinance³⁵, for a total of **\$27,795,375**. See **Schedule 5** for a summary.

TIC Interests Sold without Managing Member Approval

45. Mr. Makhijani also sold tenant-in-common interests in two properties without the knowledge or consent of Mr. Honarkar. As discussed in the rescission scenario, the proceeds from these TIC interests sold are damages to the MOM LLCs, who should have received the proceeds from those sales, but it appears as though they did not. The damages from TIC interests being sold are, based solely on the sales identified thus far, **\$5,102,695**. See **Schedule 6** for a summary.

³² See Letter to Nano Banc from Halpern May Ybarra Gelberg, dated August 28, 2023 (HONARKAR-147254).

³³ See Promissory Note NANOBANC-000245.

³⁴ See NANO_04206-8.

³⁵ See MOMRESP_00002833.

Post-JV Loans

46. Similar to in the rescission scenario, we consider proceeds from the loans taken out post the formation of the MOM LLCs as damages totaling **\$136,565,000**– see **Chart 3** above for a summary.

Late Fees and Penalties on Unpaid Property Tax

47. Due to Mr. Makhijani's mismanagement of the properties, most of the properties party to the MOM LLCs have accrued unpaid property taxes. The unpaid property tax amounts are liabilities owed by the Joint Ventures but the late fees and penalties due to nonpayment or late payments are amounts owed to Mr. Honarkar as damages due to mismanagement. The known late fees and penalties on the properties as of May 9, 2024 total **\$382,508** See **Schedule 9** for a summary.

48. Derivative damages in this scenario as applied to a 100% interest in the MOM LLCs total **\$169,845,578**. See **Chart 5** for a summary.

Chart 5

DERIVATIVE DAMAGES - TO MOM LLCs		
Damage Element	Net Present Value of Cash Flows	Reference
Damages Resulting from Capital Contribution		
Loan Amount/ Equity - Relating to \$20M Nano Banc Loan	\$ 20,000,000	<i>Schedule 5</i>
Amount of Purported \$10M Contribution Refunded to Continuum out of the Escrow used for the Loancore Refinance	\$ 3,996,395	
Interest on Loan	\$ 3,798,980	<i>Schedule 5</i>
Total Damages Resulting from Capital Contribution	\$ 27,795,375	
TIC Sold	\$ 5,102,695	<i>Schedule 6</i>
Post-JV Loans	\$ 136,565,000	<i>Schedule 7</i>
Late Fees and Penalties on Property Tax	\$ 382,508	<i>Schedule 9</i>
TOTAL DAMAGES	\$ 169,845,578	

C. Scenario Three: Damages to Mr. Honarkar

49. Finally, we have calculated Mr. Honarkar's damages owed due to fraudulent inducement and breach of contract damages described above, assuming, for these purposes, that the transaction is not rescinded and thus Mr. Honarkar retains his membership interests in the MOM LLCs. Damages as a result of the alleged fraud and breach of contract and other causes are comprised of i) loss of monetary value in Mr. Honarkar's interest in the properties contributed to the MOM LLCs due to discounts for lack of control and marketability, ii) damages resulting from the failure to make the required initial capital contribution, including incurring debt to fund part of the obligation, (these two items representing "Day 1" damages from the initial formation of the joint venture, determined based on the difference between the value of Mr. Honarkar's interests that he gave up in forming the joint venture, and the value of what Mr. Honarkar received in formation as a result of Respondents' alleged fraud), and, the following ancillary or subsequent damages, including iii) interest from the loan, at 50% interest, iv) lost profits damages, which include unpaid management fees, v) funds from the TICs sold without Mr. Honarkar's approval (of which properties deemed "a project" would be only owed to Mr. Honarkar at 50%), vi) funds from the many loans leveraged on properties in the joint venture (of which properties deemed "a project" would be only owed to Mr. Honarkar at 50%), and vii) losses due to late fees and penalties on unpaid property tax.

Monetary Value of Loss of Control and Marketability of Properties

50. The damages owed to Mr. Honarkar due to valuation discounts for the lack of control and lack of marketability of the membership interests in the entities are calculated by valuing the properties as of the date of the formation of the Joint Ventures.
51. Because Mr. Honarkar owned 100% of the membership interests in the Subsidiary Entities (again, not including Aryabhata Group, LLC) prior to the formation of the joint venture, and because the primary assets of the Subsidiary Entities were the real properties to which they held title, we considered the appraised value of those properties as of the date the membership interests were contributed to the MOM

LLCs³⁶ (June 8, 2021). The total appraised value of the properties on this basis was **\$268,040,000**. Deducting the value of Tesoro Redlands, which we consider separately as part of this scenario, we then apply a 25% discount for the lack of control and marketability³⁷ to account for the value of the entities due to the lack on control and marketability at \$53,892,500 (i.e., the decreased value of the properties to Mr. Honarkar after the formation of the MOM LLCs). We also consider the value lost to Mr. Honarkar on the Subsidiary Entity considered a “project” – Hotel Laguna, which after applying a 25% factor for discounting for a lack of control and marketability, and applying Mr. Honarkar’s 50% ownership stake post-formation of the MOM LLCs, we calculate the loss of value, and hence, his damages, to be \$25,625,000. Mr. Honarkar’s total damages due to the loss in value of the membership interests on account of the lack of control and lack of marketability caused by the MOM LLC transactions (excluding Aryabhata Group, LLC and Tesoro) total **\$79,517,500**. See **Schedule 3** for a summary.

52. In February 2022, Mr. Honarkar received an offer to purchase one of the real estate properties held, indirectly, by MOM CA Investco, LLC – Tesoro Redlands DE, LLC – for \$67,680,000 from Interest Capital Group.³⁸ Therefore, taking that as the value of Tesoro in June 2021, and applying a 25% discount for lack of control and discount for lack of marketability amounts to **\$16,920,000** of the \$67,680,000 fair market value implied in the offer price that was lost to Mr. Honarkar due to the lack of control and marketability. See **Schedule 8** for a summary.

Failure to Make Capital Contributions

53. Instead of the agreed-upon \$30 million capital contribution in cash, Mr. Makhijani caused the MOM LLCs themselves to borrow \$20 million from Nano Banc. Mr. Makhijani then caused the \$20 million in loan proceeds to be paid to his company, Continuum Analytics, Inc. (“Continuum”). Continuum then used those funds to make \$20 million of the required \$30 million capital contribution. This \$20 million loan was

³⁶ See MOMRESP_00009595-MOMRESP_00015200, HONARKAR-003580, MOMRESP_00027129, and Val-Chris Investments appraisal of Tustin Retail Properties from 8/15/18 (HONARKAR-155510) and BBG Real Estate Services appraisal of Cliff Village from 2/6/19 (NANO_08854).

³⁷ See <https://www.bvresources.com/articles/bvwire/dloc-and-dlom-for-real-estate-entities-153-1> and <https://eqvista.com/company-valuation/discount-for-lack-of-control/>.

³⁸ See MOMRESP_00058018.

secured by the properties owned by certain limited liability companies that Mr. Honarkar was contributing to the MOM LLCs.³⁹ Therefore, not only did Mr. Makhijani not contribute \$20 million in capital to the MOM LLCs, he also leveraged properties in the joint venture with an interest-bearing loan. As to the remaining \$10 million that Mr. Makhijani was required to contribute to the MOM LLCs, the \$10 million appears to have been contributed by Continuum (according to the Escrow Closing Statement), but Continuum was paid approximately \$4 million back from the escrow account used for the refinancing of Mr. Honarkar's debt. Thus, Continuum's capital contribution to the MOM LLCs was only \$6 million. Because Mr. Honarkar would not have received this capital contribution had the joint venture never been formed, we deduct this **\$6 million** from Mr. Honarkar's damages.

54. Based on the foregoing numbers, Mr. Honarkar's "Day 1" damages from the initial formation of the joint venture is then **\$90,433,895**. This is determined by the difference in the value between the assets that Mr. Honarkar transferred to the joint venture at formation (100% of the membership interests in the Subsidiary Entities [not including Arybhata Group, LLC], and the value of what Mr. Honarkar received from the joint venture at the time of formation on account of the alleged fraud.
55. The following are ancillary, or subsequent, damages incurred by Mr. Honarkar based on Respondents' wrongdoing in the operation of the joint venture after June 8, 2021:

Lost Profits Damages

56. Lost profits damages owed to Mr. Honarkar are the value of his unpaid management base fees for the five properties that fall under the Management Agreement: Retreat at Laguna Villas, LLC, Sunset Cove Villas, LLC, Duplex at Sleepy Hollow, LLC, Laguna HI, LLC, and Laguna HW, LLC. According to the Management Agreement effective January 1, 2021, Mr. Honarkar is to be paid a "Base Fee" of 5% of gross revenues in exchange for his management services.⁴⁰ Mr. Honarkar has not been paid these fees since the commencement of the joint venture on June 8, 2021. Financials available for the properties show some management fees paid in 2022 with the description "Due to Laguna HW, LLC," an entity within the MOM LLCs that Mr. Makhijani now has control

³⁹ See NANOBANC-000246.

⁴⁰ See First Amended Statement of Claim filed October 13, 2023, Exhibit 1.

over. Thus, it appears that Mr. Honarkar has not been paid these and other unpaid management fees.

57. We calculated the unpaid management fees due to Mr. Honarkar for the period from the date of the joint venture, June 8, 2021, through the expiration date of the Management Agreement, January 1, 2031. We analyzed the gross revenues of the properties under the Management Agreement for the period immediately prior to the joint venture, from January 1, 2021 to May 30, 2021. We then annualized the gross revenue to apply to the entire 2021 calendar year and applied the 5% “Base Fee” percentage to that annualized gross revenue number to calculate a base annual management fee for all five properties, amounting to \$228,402. We then calculated a historical annual growth rate of gross revenues from 2018-2019 of 3.8%, conservatively considering the period prior to 2020 due to the severe impacts of COVID-19 on the hotel and restaurant industry after that period.⁴¹ We apply that growth rate annually to the annual management fee amount through to the expiration date of January 1, 2031. We calculated the present value of the fees by using a discount rate of 8.5% based on an average of the discount rate range used for commercial real estate transactions.⁴² The total unpaid management fees calculated are thus **\$2,179,095**. See **Schedule 4** for a summary.

Remaining Damages to Mr. Honarkar

58. The remainder of the damages due to Mr. Honarkar are similar to the damages described in Scenario Two; these areas of damages are owed to Mr. Honarkar at varying percentages depending on their status as a “project” or not. Depending on the nature of the contribution from Respondents, Mr. Honarkar is owed either 100% or 50% of the damages resulting from various areas of damages for various properties. Therefore, we consider the damages resulting from the failure to make the required initial capital contribution of \$30 million and to, instead, incur debt to fund the obligation, as the interest under the loan, which we calculated to total \$3,996,395, and calculate 50% of that at **\$1,889,490** (see **Schedule 5**). We calculate the funds from the TICs sold without Mr. Honarkar’s approval, which we calculated at \$5,102,695, and

⁴¹ This 3.8% growth rate is conservative to use, as growth rates for the commercial real estate industry CAGR for Total Revenue from 2021-2022 was 8.8% (Source: Capital IQ, S&P Global, <https://www.capitaliq.com/CIQDotNet/Lists/KeyStats.aspx?listObjectId=100887374>).

⁴² See <https://fnrpusa.com/blog/discount-rate-commercial-real-estate-explained/>.

apply 50% to the TIC sold for Hotel Laguna, so that Mr. Honarkar's damages for this amounts to **\$4,584,597** (see **Schedule 6** for a summary). Damages resulting from funds from the many loans leveraged on properties in the joint venture, which totaled \$136,565,000, are calculated at 50% for the loan on Hotel Laguna, which amounts to net damages for these post-Joint Ventures loans of **\$105,419,687, after deducting amounts for valid, necessary, and reasonable reimbursements to Continuum for amounts they may have expended on behalf of the MOM LLCs, to the extent such amounts exceed only monies paid to Continuum during the joint venture** (see **Schedule 7**).

59. Finally, known losses due to late fees and penalties on unpaid property tax total **\$382,508** (see **Schedule 9**). Ancillary damages thus total **\$114,465,377**. In this scenario "day 1" plus ancillary damages to Mr. Honarkar total **\$204,899,272**. See **Chart 6** for a summary.

Chart 6

DAMAGES - TO MH		
Damage Element	Net Present Value of Cash Flows	Reference
DAMAGES - TO MH - "DAY 1"		
Loss of Monetary Value due to Lack of Control/Marketability of Properties	\$ 79,517,500	<i>Schedule 3</i>
Loss of Monetary Value in Tesoro	\$ 16,920,000	<i>Schedule 8</i>
Less: Capital Contributions	\$ 6,003,605	<i>Schedule 2</i>
Total Damages due to Initial Formation of the Joint Venture	<u>\$ 90,433,895</u>	
DAMAGES - TO MH - ANCILLARY DAMAGES		
Unpaid Management Base Fee	\$ 2,179,095	<i>Schedule 4</i>
Interest on Nano Banc Loan	\$ 1,899,490	<i>Schedule 5</i>
TIC Sold	\$ 4,584,597	<i>Schedule 6</i>
Damages Resulting from Post-JV Loans		
Post-JV Loans	\$ 123,065,000	<i>Schedule 7</i>
Less: Reimbursements to Continuum	<u>\$ 17,645,313</u>	<i>Schedule 2</i>
Net Damages Resulting from Post-JV Loans	<u>\$ 105,419,687</u>	
Late Fees and Penalties on Property Tax	\$ 382,508	<i>Schedule 9</i>
TOTAL ANCILLARY DAMAGES	<u>\$ 114,465,377</u>	
TOTAL DAMAGES	<u>\$ 204,899,272</u>	

V. CONCLUSION

60. We consider three scenarios to approach damages for Claimant. Scenario one involves a rescission in which all membership interests in the Subsidiary Entities are returned to Mr. Honarkar, reimbursements are made to Respondents, and equalizing payments for various alleged wrongdoings are paid to Mr. Honarkar which include interest on the Nano Banc loan, monies from TIC interest sold, monies from loans taken out of the property, and late fees and penalties on property tax, totaling, **(with a return of all the membership interests), \$122,200,265**. The second scenario calculates derivative damages owed to the MOM LLCs due to alleged breach of contract; these damages include damages resulting from the Nano Banc loan value and interest from the loan, monies from TIC interest sold, monies from loans taken out of the property and losses due to late fees and penalties on unpaid property tax, totaling **\$169,845,578**. The third scenario accounts for damages to Mr. Honarkar relating to his interests in the MOM LLCs; they total **\$204,899,272**. See **Chart 7** below for a summary.

Chart 7

DAMAGES SCENARIOS		
RESCISSION SCENARIO - PROPERTIES RETURNED		
TOTAL DAMAGES (in addition to the return of the Properties to MH)	\$	122,200,265
DERIVATIVE DAMAGES - TO MOM LLCs		
TOTAL DAMAGES	\$	169,845,578
DAMAGES - TO MH		
TOTAL DAMAGES	\$	204,899,272

61. The above report represents my expert opinions and the conclusions to which I am prepared to testify. I reserve the right to modify my report and conclusions as additional information is provided.

Executed in Los Angeles, California on May 20, 2024.



Michael Spindler
Senior Managing Director, B. Riley Advisory Services

SCHEDULES

Mohammad Honarkar v. Mahender Makhijani et al.

Damages Summary

Mohammad Honarkar v. Mahender Makhijani et al.									
RESCISSION SCENARIO - PROPERTIES RETURNED			DERIVATIVE DAMAGES - TO MOM LLCs			DAMAGES - TO MH			
Damage Element	Net Present Value of Cash Flows	Reference	Damage Element	Net Present Value of Cash Flows	Reference	Damage Element	Net Present Value of Cash Flows	Reference	
RESCISSION						DAMAGES - TO MH - "DAY 1"			
Properties Returned	*****Properties****					Loss of Monetary Value due to Lack of Control/Marketability of Properties	\$ 79,517,500	Schedule 3	
Less:						Loss of Monetary Value in Tesoro	\$ 16,920,000	Schedule 8	
Reimbursements to Continuum	\$ 17,645,313	Schedule 2				Less: Capital Contributions	\$ 6,003,605	Schedule 2	
Capital Contribution	\$ 6,003,605	Schedule 2							
TOTAL RESCISSION VALUE (in addition to the return of the Properties to MH)	\$ (23,648,918)					Total Damages due to Initial Formation of the Joint Venture	\$ 90,433,895		
EQUALIZING PAYMENTS			DERIVATIVE DAMAGES - TO MOM LLCs			DAMAGES - TO MH - ANCILLARY DAMAGES			
						Unpaid Management Base Fee	\$ 2,179,095	Schedule 4	
						Interest on Nano Banc Loan	\$ 1,899,490	Schedule 5	
						TIC Sold	\$ 4,584,597	Schedule 6	
						Damages Resulting from Post-JV Loans			
			Loan Amount/ Equity - Relating to \$20M Nano Banc Loan	\$ 20,000,000	Schedule 5	Post-JV Loans	\$ 123,065,000	Schedule 7	
			Amount of Purported \$10M Contribution Refunded to Continuum out of the Escrow used for the Loancore Refinance	\$ 3,996,395		Less: Reimbursements to Continuum	\$ 17,645,313	Schedule 2	
Interest on Loan	\$ 3,798,980	Schedule 5	Interest on Loan	\$ 3,798,980	Schedule 5				
Total Damages Resulting from Capital Contribution	\$ 3,798,980		Total Damages Resulting from Capital Contribution	\$ 27,795,375		Net Damages Resulting from Post-JV Loans	\$ 105,419,687		
TIC Sold	\$ 5,102,695	Schedule 6	TIC Sold	\$ 5,102,695	Schedule 6	Late Fees and Penalties on Property Tax	\$ 382,508	Schedule 9	
Post-JV Loans	\$ 136,565,000	Schedule 7	Post-JV Loans	\$ 136,565,000	Schedule 7				
Late Fees and Penalties on Property Tax	\$ 382,508	Schedule 9	Late Fees and Penalties on Property Tax	\$ 382,508	Schedule 9				
TOTAL EQUALIZING PAYMENTS	\$ 145,849,183					TOTAL ANCILLARY DAMAGES	\$ 114,465,377		
TOTAL DAMAGES (in addition to the return of the Properties to MH)	\$ 122,200,265		TOTAL DAMAGES	\$ 169,845,578		TOTAL DAMAGES	\$ 204,899,272		

Mohammad Honarkar v. Mahender Makhijani et al.**Continuum Amounts Paid on Behalf of Properties**

Due to Continuum			
Entity Sub	2021	2022	TOTAL
Retreat at Laguna Villas, LLC	\$ -	\$ 7,000	\$ 7,000
Sunset Cove Villas LLC	\$ -	\$ 81,000	\$ 81,000
Duplex at Sleepy Hollow, LLC	\$ -	\$ 14,000	\$ 14,000
Cliff Drive Properties DE, LLC	\$ -	\$ 46,849	\$ 46,849
694 NCH Apartments LLC	\$ -	\$ 22,000	\$ 22,000
Heisler Laguna LLC	\$ -	\$ 161,421	\$ 161,421
891 Laguna Canyon Road, LLC	\$ -	\$ 31,873	\$ 31,873
777 At Laguna, LLC	\$ -	\$ 31,013	\$ 31,013
Laguna Art District Complex, LLC	\$ -	\$ 3,746	\$ 3,746
Laguna Festival Center, LLC	\$ -	\$ 63,000	\$ 63,000
The Masters Building, LLC	\$ -	\$ 288,333	\$ 288,333
689 S. Coast Hwy, LLC	\$ -	\$ -	\$ -
837 Park Ave, LLC	\$ -	\$ 3,018	\$ 3,018
Laguna HI, LLC	\$ -	\$ 97,801	\$ 97,801
Laguna HW, LLC	\$ -	\$ 317,433	\$ 317,433
314 S. Harvard DE, LLC	\$ -	\$ 16,134	\$ 16,134
4110 W. 3 rd St. DE, LLC	\$ -	\$ 2,033,132	\$ 2,033,132
Tesoro Redlands, LLC	\$ -	\$ -	\$ -
Cliff Village, LLC	\$ 1,850,906	\$ 6,383,385	\$ 8,234,291
Hotel Laguna, LLC	\$ 3,181,941	\$ 3,002,299	\$ 6,184,240
Tustin Retail Properties, LLC	\$ -	\$ 9,029	\$ 9,029
			<u>\$ 17,645,313</u>

Capital Contribution			
Entity Sub		Purported Contribution Amount	TOTAL
\$20 Million		\$ 20,000,000	\$ -
\$10 Million		\$ 10,000,000	\$ 10,000,000
Refund on loancore Escrow			\$ 3,996,395
			<u>\$ 6,003,605</u>

[1] Source: General Ledgers and/or Balance Sheets for all entities, 6/8/21-12/31/31 and 1/1/22-9/30/22.

[2] See MOMRESP_00002833.

Mohammad Honarkar v. Mahender Makhijani et al.

Summary of Appraisals and Calculation of Lost Value due to DLOC and DLOM

Appraisal Closest to 6/8/21 (prior to)			[1]
Entity Sub	Appraisal Date	Appraised Value	
Retreat at Laguna Villas, LLC	5/27/2021	\$ 9,300,000.00	
Sunset Cove Villas LLC	6/3/2021	\$ 15,550,000.00	
Duplex at Sleepy Hollow, LLC	5/28/2021	\$ 2,525,000.00	
Cliff Drive Properties DE, LLC	5/27/2021	\$ 7,900,000.00	
694 NCH Apartments LLC	5/28/2021	\$ 5,800,000.00	
Heisler Laguna LLC	5/27/2021	\$ 24,800,000.00	
891 Laguna Canyon Road, LLC	6/4/2021	\$ 39,700,000.00	appraised together
777 At Laguna, LLC			
Laguna Art District Complex, LLC			
Laguna Festival Center, LLC			
The Masters Building, LLC	2/3/2020	\$ 11,900,000.00	
689 S. Coast Hwy, LLC	1/27/2020	\$ 1,375,000.00	
837 Park Ave, LLC	8/8/2018	\$ 500,000	
Laguna HI, LLC	1/27/2020	\$ 18,400,000.00	
Laguna HW, LLC	1/29/2020	\$ 6,800,000	
314 S. Harvard DE, LLC	7/30/2018	\$ 2,700,000.00	
4110 W. 3 rd St. DE, LLC	4/30/2019	\$ 12,800,000.00	
Tesoro Redlands, LLC	6/4/2021	\$ 52,470,000.00	
Cliff Village, LLC	2/6/2019	\$ 13,100,000	
Hotel Laguna, LLC	1/8/2019	\$ 41,000,000.00	
Tustin Retail Properties, LLC	8/15/2018	\$ 1,420,000	
		\$ 268,040,000	

VALUE OF PROPERTIES Due to DLOC and DLOM			[2]
Total Portfolio Appraised Value Pre-JV	[a]	\$ 268,040,000	
Less Tesoro	[b]	\$ 215,570,000	
Discount for Lack of Control (DLOC) and Discount for Lack of Marketability (DLOM)	[c]	25%	
Loss of Value due to DLOC and DLOM	[d] = [b] * [c]	\$ 53,892,500	

VALUE OF PROJECTS After DLOC and DLOM		
Total Projects (Hotel Laguna) Appraised Value Pre-JV	[e]	\$ 41,000,000
Discount for Lack of Control (DLOC) and Discount for Lack of Marketability (DLOM)	[f]	25%
Total Portfolio Appraised Value Pre-JV after DLOC and DLOM		
Application	[g] = [e] * (1-[f])	\$ 30,750,000
Value to MH of Projects After DLOC and DLOM	[h] = 50% * [g]	\$ 15,375,000
Loss of Value of Total Projects (Hotel Laguna and Newport Crossing) Appraised Value Pre-JV	[i] = [e] - [h]	\$ 25,625,000

VALUE OF PROPERTIES Due to DLOC and DLOM and VALUE OF PROJECTS After DLOC and DLOM		
Damages to MH	[j] = [d] + [i]	\$ 79,517,500

[1] See Schedule 3.1.

[2] See <https://www.bvresources.com/articles/bvwire/dloc-and-dlom-for-real-estate-entities-153-1> and <https://eqvista.com/company-valuation/discount-for-lack-of-control/>.

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Appraisals Summary

Entity	Address	Appraiser	Date	Value	Market Value	Cost Approach to Value	Sales Comparison Approach	Income Capitalization Approach	Source
Tesoro Redlands, LLC	106 W Pennsylvania Ave	BBG Real Estate Services Keith G Olsen	2/10/2022	\$ 58,300,000	\$ 58,300,000		\$ 56,400,000	\$ 58,300,000	000000_MOMRESP_00009595
Duplex at Sleepy Hollow 694 NCH Apartments LLC	689 Sleepy Hollow Ln	CBRE	5/28/2021	\$ 2,525,000		\$ 2,528,895	\$ 5,500,000	\$ 5,800,000	000001_MOMRESP_00009740
Retreat at Laguna Villas, LLC	694 N Coast Hwy	CBRE	5/28/2021	\$ 5,800,000					000002_MOMRESP_00009776
Retreat at Laguna Villas, LLC	749 Gaviota (729 ocean F	CBRE	5/27/2021	\$ 9,300,000			\$ 8,800,000	\$ 9,300,000	000003_MOMRESP_00009919
Laguna Arts District Complex, LLC; Laguna Festical; 777 at Laguna; 891 Laguna Canyon Rd	775, 777, 835, 891 & 224	CBRE	6/4/2021	\$ 39,700,000			\$ 40,300,000	\$ 39,700,000	000004_MOMRESP_00010063
Sunset Cove Villas LLC	683 Sleepy Hollow Ln	CBRE	6/3/2021	\$ 15,550,000			\$ 12,000,000	\$ 15,550,000	000005_MOMRESP_00010272
Hotel Laguna, LLC (a Project)	425-541 S Coast Hwy	CBRE	8/15/2022	\$ 50,400,000			\$ 48,100,000	\$ 50,400,000	000006_MOMRESP_00010419
Retreat at Laguna Villas, LLC	749 Gaviota (729 ocean F	CBRE	12/23/2019	\$ 8,500,000			\$ 8,000,000	\$ 8,500,000	000007_MOMRESP_00010657
Cliff Drive Properties DE, LLC	150-154 Cliff Dr (151-152	CBRE	5/27/2021	\$ 7,900,000			\$ 7,900,000	\$ 8,400,000	000008_MOMRESP_00010758
Heister Laguna LLC	Multiple (305, 331, 345, 3	CBRE	5/27/2021	\$ 24,800,000			\$ 25,200,000	\$ 24,800,000	000009_MOMRESP_00010953
Laguna Arts District Complex, LLC; Laguna Festical; 777 at Laguna; 891 Laguna Canyon Rd	775, 777, 835, 891 & 224	Kearns & Lageveld, LLC	10/19/2023	\$ 35,880,000	\$ 35,880,000	\$ 33,800,000	\$ 36,560,000	\$ 37,520,000	000010_MOMRESP_00011158
Tesoro Redlands, LLC	106 W Pennsylvania Ave	CBRE	6/4/2021	\$ 52,470,000			\$ 52,600,000	\$ 52,470,000	000011_MOMRESP_00011496
14 West 694 NCH Apartments LLC	688-690 S. Coast Highway	CBRE	12/12/2019	\$ 6,800,000			\$ 7,100,000	\$ 6,800,000	000012_MOMRESP_00011642
Cliff Drive Properties DE, LLC	694 N Coast Hwy	CBRE	1/27/2020	\$ 5,650,000			\$ 5,450,000	\$ 5,650,000	000013_MOMRESP_00011805
Laguna HI, LLC	150-154 Cliff Dr (151-152	CBRE	1/27/2020	\$ 8,130,000			\$ 8,130,000	\$ 4,900,000	000014_MOMRESP_00011921
Laguna HI, LLC	696 S Coast Hwy	CBRE	1/27/2020	\$ 18,400,000			\$ 18,900,000	\$ 18,400,000	000015_MOMRESP_00012065
8871 Research Dr, LLC	8871 Research Dr	BBG Real Estate Services Berkshir e	3/21/2018	\$ 4,700,000					000016_MOMRESP_00012219
424 Marguerite	424 Marguerite	Hathawa y Berkshir e	8/9/2020	\$ 2,650,000					000017_MOMRESP_00012353
424 1/2 Marguerite	424 1/2 Marguerite	Hathawa y Berkshir e	8/9/2020	\$ 1,528,750					000018_MOMRESP_00012389
600 Acacia Ave	600 Acacia Ave	Hathawa y	8/9/2020	\$ 4,650,000					000019_MOMRESP_00012425
689 S Coast Hwy, LLC	689 S Coast Hwy	CBRE	1/27/2020	\$ 1,375,000			\$ 1,425,000	\$ 1,375,000	000020_MOMRESP_00012457
837 Park Ave, LLC	837 Park Ave	CBRE	8/8/2018	\$ 500,000					000021_MOMRESP_00012577
Tesoro Redlands, LLC	106 W Pennsylvania Ave	CBRE	12/17/2019	\$ 42,390,000			\$ 41,600,000	\$ 42,390,000	000022_MOMRESP_00012645
Heister Laguna LLC	Multiple (305, 331, 345, 3	CBRE	12/17/2019	\$ 27,200,000			\$ 27,300,000	\$ 27,200,000	000023_MOMRESP_00012835
Sunset Cove Villas LLC	683 Sleepy Hollow Ln	CBRE	12/23/2019	\$ 15,400,000		\$ 11,000,000	\$ 12,000,000	\$ 15,400,000	000024_MOMRESP_00013012
Duplex at Sleepy Hollow	689 Sleepy Hollow Ln	CBRE	12/23/2019	\$ 2,400,000		\$ 2,200,000	\$ 2,000,000	\$ 2,400,000	000025_MOMRESP_00013113
Laguna Arts District Complex, LLC; Laguna Festical; 777 at Laguna; 891 Laguna Canyon Rd	775, 777, 835, 891 & 224	CBRE	12/17/2019	\$ 39,100,000			\$ 39,100,000	\$ 39,100,000	000026_MOMRESP_00013212
The Masters Building, LLC	2711-2713 Pacific Coast	CBRE	12/17/2019	\$ 11,900,000			\$ 11,800,000	\$ 11,900,000	000027_MOMRESP_00013388
Palm Desert Collective (C	74895 Frank Sinatra Dr	Hospitali ty Valuatio n Services	3/24/2005	\$ 14,000,000					000028_MOMRESP_00013584
Hotel Laguna, LLC (a Project)	425-541 S Coast Hwy	BBG Real Estate Services	1/8/2019	\$ 41,000,000			\$ 42,900,000	\$ 41,000,000	000029_MOMRESP_00013752
314 Harvard Blvd	314 Harvard Blvd	HVS	7/30/2018	\$ 2,700,000					000030_MOMRESP_00013900
4110 W 3rd St	4110 W 3rd St	HVS	7/30/2018	\$ 8,000,000					000030_MOMRESP_00013900
4110 W 3rd St	4110 W 3rd St	HVS	4/30/2019	\$ 12,800,000					000031_MOMRESP_00014003
Palm Desert Collective (R	38305 Cook St	Hospitali ty Valuatio n Services	3/24/2005	\$ 13,400,000					000032_MOMRESP_00014207
837 Park Ave, LLC	837 Park Ave	CBRE	8/8/2018	\$ 500,000					000033_MOMRESP_00014378
Heister Laguna, LLC	Multiple (305, 331, 345, 3	CBRE	2/3/2020	\$ 29,200,000			\$ 27,300,000	\$ 29,200,000	000034_MOMRESP_00014446
Laguna Arts District Complex, LLC; Laguna Festical; 777 at Laguna; 891 Laguna Canyon Rd	775, 777, 835, 891 & 224	CBRE	2/3/2020	\$ 41,700,000			\$ 39,000,000	\$ 41,700,000	000035_MOMRESP_00014624
The Masters Building, LLC	2711-2713 Pacific Coast	CBRE	2/3/2020	\$ 11,900,000			\$ 11,800,000	\$ 11,900,000	000036_MOMRESP_00014802
Retreat at Laguna Villas, LLC	749 Gaviota (729 ocean F	CBRE	1/27/2020	\$ 8,500,000		\$ 7,600,000	\$ 8,000,000	\$ 8,500,000	000037_MOMRESP_00014998
Sunset Cove Villas LLC	683 Sleepy Hollow Ln	CBRE	1/27/2020	\$ 15,400,000		\$ 11,000,000	\$ 12,000,000	\$ 15,400,000	000038_MOMRESP_00015099
Duplex at Sleepy Hollow	689 Sleepy Hollow Ln	CBRE	1/27/2020	\$ 2,400,000		\$ 2,000,000	\$ 2,000,000	\$ 2,400,000	000039_MOMRESP_00015200
Laguna HW, LLC	688-690 S Coast Hwy	CBRE	1/29/2020	\$ 6,800,000					HONARKAR-003580
Tustin Retail Properties, L	18410 Irvine Blvd	Val-Chris Investme nts	8/15/2018	\$ 1,420,000					HONARKAR-155510
Cliff Village	521, 535, 577, 695 & 623 4251-4255 Martingale Way & 4200-4250 Scott Drive & 1701 Corinthian Drive & 1660 Dove Street	BBG Real Estate Services	2/6/2019	\$ 13,100,000					NANO_08854
Newport Crossing	Newport Beach, California 92660	BAAR Realty Advisors	4/11/2019	\$ 40,000,000					MOMRESP_00027129

Mohammad Honarkar v. Mahender Makhijani et al.**Lost Profits | Unpaid Management Fee | Forecasted Unpaid Management Fee**

	Date		Rate
JV Date	6/8/2021		
[1] Management Agreement Effective Date	1/1/2021	Historical Growth Rate; 2018-2019	3.8% [2]
Management Agreement Expiration Date	1/1/2031	Discount Rate	8.5% [3]
Discount Period Start Date	6/24/2024		
Optional Extension Expiration Date	12/31/2041		
Mid-Point for PV and Mortality Factor	9/19/2021	7/2/2022	7/2/2023
Year	2021	2022	2023
			2024
			2025
			2026
			2027
			2028
			2029
			2030
			2031

Description	Forecasted Period - Management Fee											Sum of Forecasted Period
	6/8/2021	1/1/2022	1/1/2023	1/1/2024	1/1/2025	1/1/2026	1/1/2027	1/1/2028	1/1/2029	1/1/2030	1/1/2031	
	12/31/2021	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	1/1/2031	
[4] Management Fee for Period	228,402	237,033	245,990	255,285	264,932	274,943	285,332	296,114	307,303	318,915	330,966	\$ 3,045,216
Portion of Year	0.56	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	-	
Total Management Fee for Portion of Year	a 128,794	237,033	245,990	255,285	264,932	274,943	285,332	296,114	307,303	318,915	-	2,614,641
Discount Rate	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	
Discount Period (mid-period convention)	(2.7625)	(1.9795)	(0.9802)	0.0205	1.0212	2.0205	3.0198	4.0205	5.0212	6.0205	6.5216	
Present Value Factor	b 1.0000	1.0000	1.0000	0.9983	0.9201	0.8480	0.7816	0.7204	0.6639	0.6119	0.5874	
Present Value of Total Fees	c = a * b	\$ 128,794	\$ 237,033	\$ 245,990	\$ 254,858	\$ 243,754	\$ 233,161	\$ 223,027	\$ 213,311	\$ 204,017	\$ 195,150	\$ -
												\$ 2,179,095

[1] See Schedule 1 for relevant dates.

[2] See Schedule 2.1 for revenue growth rate 2018-2019 (although pre-JV, most conservative growth rate to use without considering 2020's COVID effect.)

[3] Discount rate used is between 5% and 12% (see <https://fnrpusa.com/blog/discount-rate-commercial-real-estate-explained/>).

[4] See Schedule 2.1 for gross revenue amounts annualized for 2021 and management fees calculated using a 5% rate on gross revenue.

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Lost Profits | Unpaid Management Fee | Historical Management Fee Calculation

Source: Profit and Loss Statements.

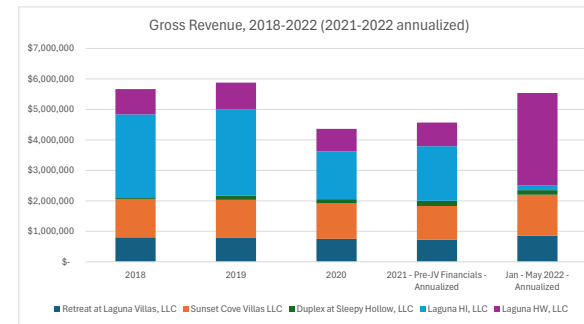
Management Fee					
Entity Sub	Jan - May 2021 - Pre-JV Financials	Jan - May 2021 - Post-JV Financials	Pre-Post	Jan - May 2022	
Retreat at Laguna Villas, LLC	\$ 30,195	\$ 10,570	\$ 19,625	\$ 35,441	Due to Laguna HW, LLC
Sunset Cove Villas LLC	\$ 46,169	\$ 16,159	\$ 30,010	\$ 56,367	Due to Laguna HW, LLC
Duplex at Sleepy Hollow, LLC	\$ 7,011	\$ 2,461	\$ 4,550	\$ 6,240	Due to Laguna HW, LLC
[1] Laguna HI, LLC	\$ -	\$ 26,136	\$ (26,136)	\$ -	
Laguna HW, LLC	\$ -	\$ -	\$ -	\$ -	
Total	\$ 83,375	\$ 55,326		\$ 98,048	

Gross Revenue				
Entity Sub	Jan - May 2021 - Pre-JV Financials	Jan - May 2022	Jan - May 2021 - Pre-JV Financials	5% of Gross Revenues as per Management Agreement
Retreat at Laguna Villas, LLC	\$ 301,950	\$ 354,407	10%	\$ 17,720
Sunset Cove Villas LLC	\$ 461,688	\$ 563,667	10%	\$ 28,183
Duplex at Sleepy Hollow, LLC	\$ 70,109	\$ 62,403	10%	\$ 3,120
[1] Laguna HI, LLC	\$ 746,742	\$ 67,042	0%	\$ 3,352
[2] Laguna HW, LLC	\$ 322,864	\$ 1,261,211	0%	\$ 63,061
Total	\$ 1,903,354	\$ 2,308,729		\$ 115,436

[1] Laguna HI, LLC P&L Statement for 2022 was blank, lodging sales (that only went through April 2022) taken from General Ledger.

[2] Laguna HW gross revenue is calculated by subtracting management fee revenues for management fee calculation.

Gross Revenue Growth Trend						Base Fee - 5%
Entity Sub	2018	2019	2020	2021 - Pre-JV Financials - Annualized	Jan - May 2022 - Annualized	2021 - Pre-JV Financials - Annualized
Retreat at Laguna Villas, LLC	\$ 801,568	\$ 798,151	\$ 754,488	\$ 724,681	\$ 850,577	\$ 36,234
Sunset Cove Villas LLC	\$ 1,263,036	\$ 1,236,639	\$ 1,162,176	\$ 1,108,052	\$ 1,352,800	\$ 55,403
Duplex at Sleepy Hollow, LLC	\$ 51,042	\$ 131,980	\$ 138,595	\$ 168,263	\$ 149,766	\$ 8,413
Laguna HI, LLC	\$ 2,721,009	\$ 2,833,209	\$ 1,570,443	\$ 1,792,181	\$ 160,901	\$ 89,609
[2] Laguna HW, LLC	\$ 828,950	\$ 879,713	\$ 738,058	\$ 774,873	\$ 3,026,906	\$ 38,744
Total	\$ 5,665,604	\$ 5,879,691	\$ 4,363,760	\$ 4,568,049	\$ 5,540,950	\$ 228,402
		4%	-26%	5%	21%	



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Interest on Loan | \$20M Loan Account 7000353700

Source: NANO_04206-8 and Promissory Note NANOBANC-000245

Date of Arbitration 5/13/2024

TRANSACTIONHISTORYSTATEMENT

Loan Account 7000353700
Current Balance 19,184,817.74
Statement Date 01/19/2024

Date Posted	Description	Effective Date	Transaction Amount	Principal	Interest	Period	Period - Days	Interest Rate	Escrow/ Other	Late Charge/ Fees	Balance
6/7/2024	PRINCIPAL PAYMENT	6/7/2024	19,311,650.70	19,184,817.74	126,832.96		28.00	8.50%	-	-	19,184,817.74
5/10/2024	REGULAR PAYMENT	5/10/2024	135,892.46	-	135,892.46		30.00	8.50%	-	-	19,184,817.74
4/10/2024	REGULAR PAYMENT	4/10/2024	140,422.21	-	140,422.21		31.00	8.50%	-	-	19,184,817.74
3/10/2024	REGULAR PAYMENT	3/10/2024	131,362.71	-	131,362.71		29.00	8.50%	-	-	19,184,817.74
2/10/2024	REGULAR PAYMENT	2/10/2024	140,422.21	-	140,422.21		31.00	8.50%	-	-	19,184,817.74
1/10/2024	REGULAR PAYMENT	1/10/2024	95,124.72	-	95,124.72		21.00	8.50%	-	-	19,184,817.74
12/20/2023	REGULAR PAYMENT	12/20/2023	135,892.46	-	135,892.46	0.078	28.00	9.11%	-	-	19,184,817.74
11/22/2023	INTEREST DUE PMT	11/22/2023	140,422.21	-	140,422.21	-	33.00	7.98%	-	-	19,184,817.74
11/22/2023	INTEREST DUE PMT	11/22/2023	135,892.46	-	135,892.46	0.006	33.00	7.73%	-	-	19,184,817.74
11/20/2023	Assessed Late Chg	11/20/2023	7,021.11	-	-	0.083	31.00	0.00%	-	7,021.11	19,184,817.74
10/20/2023	Assessed Late Chg	10/20/2023	6,794.62	-	-	0.106	38.00	0.00%	-	-	19,184,817.74
9/12/2023	REGULAR PAYMENT	9/12/2023	143,521.49	-	143,521.49	0.072	33.00	8.16%	-	-	19,184,817.74
8/16/2023	PRINCIPAL PAYMENT	8/16/2023	815,182.25	815,182.25	-	0.017	6.00	0.00%	-	6,794.62	19,184,817.74
8/10/2023	REGULAR PAYMENT	8/10/2023	142,083.33	-	142,083.33	0.083	31.00	8.25%	-	-	19,999,999.99
7/10/2023	REGULAR PAYMENT	7/10/2023	137,500.00	-	137,500.00	0.078	28.00	8.84%	-	-	19,999,999.99
6/12/2023	REGULAR PAYMENT	6/12/2023	142,916.67	-	142,916.67	0.089	33.00	7.80%	-	-	19,999,999.99
5/10/2023	REGULAR PAYMENT	5/10/2023	133,333.33	-	133,333.33	0.083	30.00	8.00%	-	-	19,999,999.99
4/10/2023	REGULAR PAYMENT	4/10/2023	135,972.23	-	135,972.23	0.083	31.00	7.90%	-	-	19,999,999.99
3/10/2023	REGULAR PAYMENT	3/10/2023	121,666.66	-	121,666.66	0.083	28.00	7.82%	-	-	19,999,999.99
2/10/2023	REGULAR PAYMENT	2/10/2023	129,166.67	-	129,166.67	0.083	31.00	7.50%	-	-	19,999,999.99
1/10/2023	REGULAR PAYMENT	1/10/2023	127,777.78	-	127,777.78	0.078	29.00	7.93%	-	-	19,999,999.99
12/12/2022	REGULAR PAYMENT	12/12/2022	119,583.33	-	119,583.33	0.089	32.00	6.73%	-	-	19,999,999.99
11/10/2022	REGULAR PAYMENT	11/10/2022	107,638.89	-	107,638.89	0.081	30.00	6.46%	-	-	19,999,999.99
10/11/2022	REGULAR PAYMENT	10/11/2022	99,166.67	-	99,166.67	0.081	29.00	6.16%	-	-	19,999,999.99
9/12/2022	REGULAR PAYMENT	9/12/2022	100,138.89	-	100,138.89	0.089	33.00	5.46%	-	-	19,999,999.99
8/10/2022	REGULAR PAYMENT	8/10/2022	81,805.55	-	81,805.55	0.089	33.00	4.46%	-	-	19,999,999.99
7/8/2022	REGULAR PAYMENT	7/8/2022	76,666.67	-	76,666.67	0.069	25.00	5.52%	-	-	19,999,999.99
6/13/2022	REGULAR PAYMENT	6/13/2022	68,888.89	-	68,888.89	0.092	34.00	3.65%	-	-	19,999,999.99
5/10/2022	REGULAR PAYMENT	5/10/2022	66,666.67	0.01	66,666.66	0.081	29.00	4.14%	-	-	19,999,999.99
4/11/2022	REGULAR PAYMENT	4/11/2022	68,888.89	-	68,888.89	0.086	32.00	3.88%	-	-	20,000,000.00
3/10/2022	REGULAR PAYMENT	3/10/2022	62,222.22	-	62,222.22	0.083	28.00	4.00%	-	-	20,000,000.00
2/10/2022	REGULAR PAYMENT	2/10/2022	68,888.89	-	68,888.89	0.083	31.00	4.00%	-	-	20,000,000.00
1/10/2022	REGULAR PAYMENT	1/10/2022	68,888.89	-	68,888.89	0.075	28.00	4.43%	-	-	20,000,000.00
12/13/2021	REGULAR PAYMENT	12/13/2021	66,666.67	-	66,666.67	0.092	33.00	3.64%	-	-	20,000,000.00
11/10/2021	REGULAR PAYMENT	11/10/2021	68,888.89	-	68,888.89	0.078	29.00	4.28%	-	-	20,000,000.00
10/12/2021	REGULAR PAYMENT	10/12/2021	66,666.66	-	66,666.66	0.089	32.00	3.75%	-	-	20,000,000.00
9/10/2021	REGULAR PAYMENT	9/10/2021	68,888.89	-	68,888.89	0.083	31.00	4.00%	-	-	20,000,000.00
8/10/2021	REGULAR PAYMENT	8/10/2021	68,888.89	-	68,888.89	0.086	32.00	3.88%	-	-	20,000,000.00
7/9/2021	REGULAR PAYMENT	7/9/2021	73,333.33	-	73,333.33	0.089	32.00	4.12%	-	-	20,000,000.00
6/7/2021	REGULAR PAYMENT	6/7/2021	20,000,000.00	-	-	-	-	-	-	-	20,000,000.00
			\$ 23,812,796.06	\$ 20,000,000.00	\$ 3,798,980.33				\$ 13,815.73		

Effective Date	Old Rate	New Rate
7/27/2023	8.25%	8.50%
5/4/2023	8.00%	8.25%
3/23/2023	7.75%	8.00%
2/2/2023	7.50%	7.75%
12/15/2022	7.00%	7.50%
11/3/2022	6.25%	7.00%
9/22/2022	5.50%	6.25%
7/28/2022	4.75%	5.50%
6/16/2022	4.00%	4.75%

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TIC Sold

TIC Sold						
Property	Buyer	Date	Interest %	Interest Amount	Damages Amount	Damages Amount - MH
Hotel Laguna	Jaachak, LLC	4/10/2022	5.18%	\$ 1,036,195	\$ 1,036,195	\$ 518,097 [1]
Laguna HI, LLC	Cheema & Ghuma Properties, L	12/30/2022	8.313%	\$ 4,066,500	\$ 4,066,500	\$ 4,066,500 [2]
TOTAL				\$ 5,102,695	\$ 5,102,695	\$ 4,584,597

[1] See Declaration of M. Honarkar ISO Receiver App., May 17, 2023, Ex. 6.

[2] See Declaration of M. Honarkar ISO Receiver App., May 17, 2023, Ex. 7, and NANO_27313 p. 10, and BPM_MOM 002605.

Mohammad Honarkar v. Mahender Makhijani et al.**Post-JV Loans**

Post-JV Loans						
Property/ies	Lender	Date	Loan Amount	Damages Amount	Damages Amount - MH	
Tesoro Redlands, LLC	Nano Banc	7/1/2021	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	[1]
The Masters Buildings, LLC	Cantor Group IV LLC	10/26/2021	\$ 11,000,000	\$ 11,000,000	\$ 11,000,000	[2]
Laguna HW, LLC	Cantor Group IV LLC	10/26/2021	\$ 8,300,000	\$ 8,300,000	\$ 8,300,000	[2]
Tustin Retail Properties	Cantor Group IV LLC	10/26/2021	\$ 2,100,000	\$ 2,100,000	\$ 2,100,000	[2]
Laguna HW, LLC	Loan Oak Fund, LLC	12/28/2021	\$ 3,500,000	\$ 3,500,000	\$ 3,500,000	[2]
The Masters Buildings, LLC	Loan Oak Fund, LLC	12/28/2021	\$ 5,500,000	\$ 5,500,000	\$ 5,500,000	[2]
Laguna HW, LLC, The Masters Buildings, LLC	Qualfax, Inc. c/o RTI Properties, Inc.	12/28/2021	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	[2]
Laguna HI, LLC	Cantor Group IV LLC	2/11/2022	\$ 18,175,000	\$ 18,175,000	\$ 18,175,000	[3]
Tesoro Redlands, LLC	Preferred Bank	2/24/2022	\$ 11,400,000	\$ 11,400,000	\$ 11,400,000	[7]
Laguna HW, LLC	Cantor Group V LLC	5/2/2022	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	[4]
Laguna Arts District Complex, LLC	Cantor Group IV LLC	11/21/2022	\$ 16,500,000	\$ 16,500,000	\$ 16,500,000	[5]
Hotel Laguna, LLC	Banc of California	11/4/2022	\$ 27,000,000	\$ 27,000,000	\$ 13,500,000	[6]
The Masters Buildings, LLC	PMF CA REIT, LLC	8/31/2023	\$ 6,540,000	\$ 6,540,000	\$ 6,540,000	[2]
Laguna HI, LLC	Wilshire Quinn Income Fund, LLC	11/15/2023	\$ 12,550,000	\$ 12,550,000	\$ 12,550,000	[2]
TOTAL			\$ 136,565,000	\$ 136,565,000	\$ 123,065,000	

[1] See MOMRESP_00083487.

[2] See MOMRESP_00119375.

[3] See MOMRESP_00080952.

[4] See MOMRESP_00080351.

[5] See MOMRESP_00080495.

[6] See Decl. of C. Lu ISO Receiver App., Exhibits 2-3.

[7] See MOMRESP_00119375, Tesoro \$39M loan less \$27.6M of the Loancore refinance.

Mohammad Honarkar v. Mahender Makhijani et al.

Loss of Monetary Value in Tesoro Redlands, LLC

Loss of Monetary Value in Tesoro Redlands, LLC					
Property	Buyer	Date	Proposed Sale Amount [1]	DLOC and DLOM [2]	Value due to DLOC and DLOM
Tesoro Redlands, LLC	Interest Capital Group	2/23/2022	\$ 67,680,000	25%	\$ 16,920,000

[1] See MOMRESP_00058018.

[2] See <https://www.bvresources.com/articles/bwire/dloc-and-dlom-for-real-estate-entities-153-1> and <https://eqvista.com/company-valuation/discount-for-lack-of-control/>.

Mohammad Honarkar v. Mahender Makhijani et al.

Late Fees and Penalties | Property Tax

Source: HONARKAR-186618 (Past Due Secured Property Taxes 2022-2024 as of 05.09.2024.pdf)

			2022-2023					2023-2024				Total Past-due Amount for 2022- 2024 as of 5/9/2024
			1st Installment Due Date		2nd Installment Due Date			1st Installment Due Date		2nd Installment Due Date		
Property Name	Property Tax	Parcel #	12/10/2022	1st Installment- Late Fee	4/10/2023	2nd Installment- Late Fee	Penalties	12/11/2023	1st Installment- Late Fee	4/10/2023	2nd Installment- Late Fee	
694 NCH Apartments	1 Parcel	496-132-12	24,894.66	2,489.47	24,894.66	2,489.47	8,253.13	25,455.83	2,545.58	25,455.83	2,568.58	91,022.80
777 at Laguna	1 Parcel	641-241-12		-	-	-		24,903.32	2,490.33	24,903.32	2,513.33	27,393.65
777 at Laguna	1 Parcel - Parking Lot	641-231-03		-	-	-		6,425.29	642.53	6,425.29	665.52	7,067.82
Duplex at Sleepy Hollow	1 Parcel	644-022-11	12,904.46	1,290.45	12,904.46	1,290.45	4,296.43	13,202.92	1,320.29	13,202.92	1,343.29	47,209.45
Heisler Laguna	7 Parcels - 397	496-082-01	17,385.99	1,738.60	17,385.99	1,738.60	5,775.27	18,028.43	1,802.84	18,028.43	1,825.84	63,855.72
	385 NCH	496-082-02	11,452.16	1,145.22	11,452.16	1,145.22	3,817.16	11,688.18	1,168.82	11,688.18	1,191.81	41,868.91
	369 NCH	496-082-03	8,439.04	843.90	8,439.04	843.90	2,822.87	8,612.90	861.29	8,612.90	884.29	30,862.95
	353 NCH	496-082-04	18,218.29	1,821.83	18,218.29	1,821.83	6,049.94	18,583.63	1,858.36	18,583.63	1,881.36	66,572.17
	345 NCH	496-082-05		-	19,440.06	1,944.01	3,245.60	19,828.76	1,982.88	19,828.76	2,005.87	46,441.30
	331 NCH	496-082-06		-	20,803.12	2,080.31	3,470.44	19,320.40	1,932.04	19,320.40	1,955.04	47,606.31
	305 NCH	496-082-07		-	48,035.73	4,803.57	7,963.83	48,988.30	4,898.83	48,988.30	4,921.83	114,690.26
Laguna Art District	1 Parcel	641-231-15		-	-	-		5,346.66	534.67	5,346.66	557.66	5,881.33
Laguna Festival Center	1 Parcel	641-231-13		-	-	-		61,789.08	6,178.91	61,789.08	6,201.90	67,967.99
Cliff Drive	3 Parcels	932-750-09	10,275.25	1,027.53	10,275.25	1,027.53	3,428.75	10,502.33	1,050.23	10,502.33	1,073.23	37,586.86
		932-750-11	10,275.25	1,027.53	10,275.25	1,027.53	3,428.75	10,502.33	1,050.23	10,502.33	1,073.23	37,586.86
		932-750-12	13,004.63	1,300.46	13,004.63	1,300.46	4,329.43	13,326.83	1,332.68	13,326.83	1,355.68	47,599.13
Retreat at Laguna Villas	1 Parcel	644-023-12	39,680.68	3,968.07	39,680.68	3,968.07	13,132.62	40,553.26	4,055.33	40,553.26	4,078.32	145,038.70
Sunset Cove	1 Parcel	644-022-10	64,840.73	6,484.07	64,840.73	6,484.07	21,435.42	82,049.62	8,204.96	82,049.62	8,227.96	254,339.61
837 Park Avenue	1 Parcel	644-111-55	3,088.56	308.86	3,088.56	308.86	1,057.15	3,160.19	316.02	3,160.19	339.01	11,328.19
891 Laguna Canyon	1 Parcel	641-231-07		-	-	-		34,124.73	3,412.47	34,124.73	3,435.47	37,537.20
Tesoro Redlands	1 Parcel	0167-151-24-000	188,979.87	31,181.68	188,979.87	31,181.68	37,820.98	191,740.49	19174.049	191,740.49	19,184.05	689,058.62
			\$ 423,439.57	\$ 54,627.65	\$ 511,718.48	\$ 63,455.54	\$ 130,327.77	\$ 668,133.48	\$ 66,813.35	\$ 668,133.48	\$ 67,283.27	\$ 1,918,515.84
Total Late Fees and Penalties						\$ 382,508						

APPENDICES

Mohammad Honarkar v. Mahender Makhijani et al.**Materials Considered**

Pleadings, Depositions, and Deposition Exhibits:

First Amended Statement of Claim filed October 13, 2023
 2023-05-03 [002] Complaint
 2023.05.17 066 REVISED RJN ISO Receiver App
 2024-01-19 Respondents Return to Writ (002)
 2023-05-17 [068] REVISED Receiver Ex Parte Application
 2023-05-17 [071] REVISED Decl. of C. Lu ISO Receiver App
 2023-05-17 [072] REVISED Decl. of D. Stapleton ISO Receiver App
 2023-05-17 [073] REVISED Decl. of J. Ybarra ISO Receiver App
 2023-05-17 [074] REVISED Decl. of M. Honarkar ISO Receiver App
 2023-05-17 [075] REVISED Decl. of M. Hope ISO Receiver App
 2023-05-17 [076] REVISED Decl. of N. Gholizadeh ISO Receiver App
 2023-05-17 [077] REVISED Decl. of S. Maralan ISO Receiver App
 2023-05-17 [068] REVISED Receiver Ex Parte Application
 2023-05-17 [071] REVISED Decl. of C. Lu ISO Receiver App
 2023-05-17 [072] REVISED Decl. of D. Stapleton ISO Receiver App
 2023-05-17 [073] REVISED Decl. of J. Ybarra ISO Receiver App
 2023-05-17 [074] REVISED Decl. of M. Honarkar ISO Receiver App
 2023-05-17 [075] REVISED Decl. of M. Hope ISO Receiver App
 2023-05-17 [076] REVISED Decl. of N. Gholizadeh ISO Receiver App
 2023-05-17 [077] REVISED Decl. of S. Maralan ISO Receiver App
 2024-01-19 Respondents Return to Writ
 Michael Kluchin Deposition (Superior Court of the State of California for the
 County
 of Orange, Central Justice Center, Case No.
 30-2023-01322886-CU-OR-CJC), June 16, 2023 and Exhibits

Other Documents Considered:

BPM_MOM
 BPM_MOM
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Mohammad Honarkar v. Mahender Makhijani et al.

Materials Considered

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

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Exhibit 1 to MOM Entities' Responses to Honarkar's Interrogatories, April 19, 2024

HONARKAR-003580

HONARKAR-029478 - MOM CA Investco, LLC 2021 K1

HONARKAR-147254 - Letter to Nano Banc from Halpern May Ybarra Gelberg, dated August 28, 2023

HONARKAR-155510 - Val-Chris Investments appraisal of Tustin Retail Properties from 8/15/18

HONARKAR-186618 - Past Due Secured Property Taxes 2022-2024 as of 05.09.2024

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

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Mohammad Honarkar v. Mahender Makhijani et al.

Materials Considered

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MOMRESP_00000566-MOMRESP_00000578
MOMRESP_00000579-MOMRESP_00000589
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MOMRESP_00000741-MOMRESP_00000861
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MOMRESP_00000908-MOMRESP_00000925
MOMRESP_00000926-MOMRESP_00000944
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MOMRESP_00000949-MOMRESP_00000952
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MOMRESP_00000957-MOMRESP_00000960

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Materials Considered

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MOMRESP_00000965-MOMRESP_00000968
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Materials Considered

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MOMRESP_00002579-MOMRESP_00002581

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Materials Considered

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MOMRESP_00004343-MOMRESP_00004345
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Materials Considered

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MOMRESP_00004387-MOMRESP_00004396
MOMRESP_00004397-MOMRESP_00004400
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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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MOMRESP_00007307-MOMRESP_00007333
MOMRESP_00007334-MOMRESP_00007358
MOMRESP_00007359-MOMRESP_00007390
MOMRESP_00007391-MOMRESP_00007413

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Materials Considered

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MOMRESP_00007552-MOMRESP_00007556
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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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Materials Considered

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MOMRESP_00075518-MOMRESP_00075521
MOMRESP_00075522-MOMRESP_00075525
MOMRESP_00075526-MOMRESP_00075532
MOMRESP_00075533-MOMRESP_00075539
MOMRESP_00075540-MOMRESP_00075546
MOMRESP_00075547-MOMRESP_00075553
MOMRESP_00075554-MOMRESP_00075560
MOMRESP_00075561-MOMRESP_00075567
MOMRESP_00075568-MOMRESP_00075678

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Materials Considered

MOMRESP_00075679-MOMRESP_00075791
MOMRESP_00075792-MOMRESP_00075795
MOMRESP_00075796-MOMRESP_00075799
MOMRESP_00075800-MOMRESP_00075804
MOMRESP_00075805-MOMRESP_00075808
MOMRESP_00075809-MOMRESP_00075812
MOMRESP_00075813-MOMRESP_00075817
MOMRESP_00075818-MOMRESP_00075822
MOMRESP_00075823-MOMRESP_00075828
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MOMRESP_00075834-MOMRESP_00075837
MOMRESP_00075838-MOMRESP_00075841
MOMRESP_00075842-MOMRESP_00075849
MOMRESP_00075850-MOMRESP_00075858
MOMRESP_00075859-MOMRESP_00075866
MOMRESP_00075867-MOMRESP_00075874
MOMRESP_00075875-MOMRESP_00075881
MOMRESP_00075882-MOMRESP_00075888
MOMRESP_00075889-MOMRESP_00076027
MOMRESP_00076028-MOMRESP_00076063
MOMRESP_00076064-MOMRESP_00076068
MOMRESP_00076069-MOMRESP_00076073
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MOMRESP_00076615-MOMRESP_00076952
MOMRESP_00076953-MOMRESP_00077051
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MOMRESP_00077237-MOMRESP_00077339
MOMRESP_00077340-MOMRESP_00077499
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MOMRESP_00077653-MOMRESP_00077828
MOMRESP_00077829-MOMRESP_00077832
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MOMRESP_00077838-MOMRESP_00077841
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MOMRESP_00077847-MOMRESP_00077850
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MOMRESP_00077858-MOMRESP_00077864
MOMRESP_00077865-MOMRESP_00077871
MOMRESP_00077872-MOMRESP_00077878
MOMRESP_00077879-MOMRESP_00077885
MOMRESP_00077886-MOMRESP_00077892
MOMRESP_00077893-MOMRESP_00077894
MOMRESP_00077895-MOMRESP_00077896
MOMRESP_00077897-MOMRESP_00077898
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MOMRESP_00077918-MOMRESP_00077923
MOMRESP_00077924-MOMRESP_00077928
MOMRESP_00077929-MOMRESP_00077933
MOMRESP_00077934-MOMRESP_00078060

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Materials Considered

MOMRESP_00078061-MOMRESP_00078215
MOMRESP_00078216-MOMRESP_00078223
MOMRESP_00078224-MOMRESP_00078236
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MOMRESP_00078252-MOMRESP_00078260
MOMRESP_00078261-MOMRESP_00078270
MOMRESP_00078271-MOMRESP_00078278
MOMRESP_00078279-MOMRESP_00078290
MOMRESP_00078291-MOMRESP_00078302
MOMRESP_00078303-MOMRESP_00078316
MOMRESP_00078317-MOMRESP_00078325
MOMRESP_00078326-MOMRESP_00078335
MOMRESP_00078336-MOMRESP_00078348
MOMRESP_00078349-MOMRESP_00078363
MOMRESP_00078364-MOMRESP_00078375
MOMRESP_00078376-MOMRESP_00078387
MOMRESP_00078388-MOMRESP_00078397
MOMRESP_00078398-MOMRESP_00078408
MOMRESP_00078409-MOMRESP_00078420
MOMRESP_00078421-MOMRESP_00078428
MOMRESP_00078429-MOMRESP_00078441
MOMRESP_00078442-MOMRESP_00078453
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MOMRESP_00078469-MOMRESP_00078475
MOMRESP_00078476-MOMRESP_00078481
MOMRESP_00078482-MOMRESP_00078490
MOMRESP_00078491-MOMRESP_00078495
MOMRESP_00078496-MOMRESP_00078504
MOMRESP_00078505-MOMRESP_00078518
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MOMRESP_00078540-MOMRESP_00078549
MOMRESP_00078550-MOMRESP_00078561
MOMRESP_00078562-MOMRESP_00078571
MOMRESP_00078572-MOMRESP_00078577
MOMRESP_00078578-MOMRESP_00078583
MOMRESP_00078584-MOMRESP_00078590
MOMRESP_00078591-MOMRESP_00078598
MOMRESP_00078599-MOMRESP_00078607
MOMRESP_00078608-MOMRESP_00078613
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MOMRESP_00078621-MOMRESP_00078626
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MOMRESP_00078636-MOMRESP_00078644
MOMRESP_00078645-MOMRESP_00078653
MOMRESP_00078654-MOMRESP_00078662
MOMRESP_00078663-MOMRESP_00078669
MOMRESP_00078670-MOMRESP_00078673
MOMRESP_00078674-MOMRESP_00078677
MOMRESP_00078678-MOMRESP_00078680
MOMRESP_00078681-MOMRESP_00078684
MOMRESP_00078685-MOMRESP_00078688
MOMRESP_00078689-MOMRESP_00078695
MOMRESP_00078696-MOMRESP_00078699

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Materials Considered

MOMRESP_00078700-MOMRESP_00078703
MOMRESP_00078704-MOMRESP_00078706
MOMRESP_00078707-MOMRESP_00078710
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MOMRESP_00078719-MOMRESP_00078722
MOMRESP_00078723-MOMRESP_00078725
MOMRESP_00078726-MOMRESP_00078729
MOMRESP_00078730-MOMRESP_00078735
MOMRESP_00078736-MOMRESP_00078742
MOMRESP_00078743-MOMRESP_00078748
MOMRESP_00078749-MOMRESP_00078753
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MOMRESP_00078759-MOMRESP_00078891
MOMRESP_00078892-MOMRESP_00079042
MOMRESP_00079043-MOMRESP_00079251
MOMRESP_00079252-MOMRESP_00079527
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MOMRESP_00079530-MOMRESP_00079531
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MOMRESP_00079640-MOMRESP_00079648
MOMRESP_00079649-MOMRESP_00079655
MOMRESP_00079656-MOMRESP_00079664
MOMRESP_00079665-MOMRESP_00079671
MOMRESP_00079672-MOMRESP_00079679

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Materials Considered

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MOMRESP_00079686-MOMRESP_00079691
MOMRESP_00079692-MOMRESP_00079697
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MOMRESP_00079718-MOMRESP_00079727
MOMRESP_00079728-MOMRESP_00079736
MOMRESP_00079737-MOMRESP_00079746
MOMRESP_00079747-MOMRESP_00079756
MOMRESP_00079757-MOMRESP_00079767
MOMRESP_00079768-MOMRESP_00079771
MOMRESP_00079772-MOMRESP_00079775
MOMRESP_00079776-MOMRESP_00079779
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MOMRESP_00079795-MOMRESP_00079799
MOMRESP_00079800-MOMRESP_00079803
MOMRESP_00079804-MOMRESP_00079807
MOMRESP_00079808-MOMRESP_00079811
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MOMRESP_00079817-MOMRESP_00079820
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MOMRESP_00079837-MOMRESP_00079843
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MOMRESP_00079860-MOMRESP_00079861
MOMRESP_00079862-MOMRESP_00079863
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MOMRESP_00079866-MOMRESP_00079867
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MOMRESP_00079873-MOMRESP_00079874
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MOMRESP_00079932-MOMRESP_00079937
MOMRESP_00079938-MOMRESP_00079945
MOMRESP_00079946-MOMRESP_00079951
MOMRESP_00079952-MOMRESP_00079956
MOMRESP_00079957-MOMRESP_00079961
MOMRESP_00079962-MOMRESP_00079966
MOMRESP_00079967-MOMRESP_00079968
MOMRESP_00079969-MOMRESP_00079972

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Materials Considered

MOMRESP_00079973-MOMRESP_00079977
MOMRESP_00079978-MOMRESP_00079982
MOMRESP_00079983-MOMRESP_00079986
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MOMRESP_00079995-MOMRESP_00079998
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MOMRESP_00080004
MOMRESP_00080005
MOMRESP_00080006
MOMRESP_00080007
MOMRESP_00080008-MOMRESP_00080013
MOMRESP_00080014-MOMRESP_00080017
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MOMRESP_00080025-MOMRESP_00080051
MOMRESP_00080052-MOMRESP_00080054
MOMRESP_00080055-MOMRESP_00080056
MOMRESP_00080057-MOMRESP_00080071
MOMRESP_00080072-MOMRESP_00080086
MOMRESP_00080087-MOMRESP_00080090
MOMRESP_00080091-MOMRESP_00080126
MOMRESP_00080127-MOMRESP_00080133
MOMRESP_00080134-MOMRESP_00080160
MOMRESP_00080161-MOMRESP_00080167
MOMRESP_00080168-MOMRESP_00080179
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MOMRESP_00080182-MOMRESP_00080198
MOMRESP_00080199
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MOMRESP_00080206-MOMRESP_00080212
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MOMRESP_00080247-MOMRESP_00080256
MOMRESP_00080257-MOMRESP_00080262
MOMRESP_00080263-MOMRESP_00080267
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MOMRESP_00080281-MOMRESP_00080289
MOMRESP_00080290-MOMRESP_00080296
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MOMRESP_00080418-MOMRESP_00080423
MOMRESP_00080424-MOMRESP_00080428
MOMRESP_00080429-MOMRESP_00080434

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Materials Considered

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MOMRESP_00080440-MOMRESP_00080444
MOMRESP_00080445-MOMRESP_00080450
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MOMRESP_00080468-MOMRESP_00080472
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MOMRESP_00080478-MOMRESP_00080484
MOMRESP_00080485-MOMRESP_00080489
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MOMRESP_00080495-MOMRESP_00080544
MOMRESP_00080545-MOMRESP_00080549
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MOMRESP_00080593-MOMRESP_00080598
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MOMRESP_00080787-MOMRESP_00080794
MOMRESP_00080795-MOMRESP_00080812
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MOMRESP_00080831-MOMRESP_00080854
MOMRESP_00080855-MOMRESP_00080875
MOMRESP_00080876-MOMRESP_00080900
MOMRESP_00080901-MOMRESP_00080944

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Materials Considered

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MOMRESP_00080952-MOMRESP_00080994
MOMRESP_00080995-MOMRESP_00081002
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MOMRESP_00081018-MOMRESP_00081022
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MOMRESP_00081031-MOMRESP_00081035
MOMRESP_00081036-MOMRESP_00081043
MOMRESP_00081044-MOMRESP_00081049
MOMRESP_00081050-MOMRESP_00081054
MOMRESP_00081055-MOMRESP_00081061
MOMRESP_00081062-MOMRESP_00081066
MOMRESP_00081067-MOMRESP_00081071
MOMRESP_00081072-MOMRESP_00081079
MOMRESP_00081080-MOMRESP_00081086
MOMRESP_00081087-MOMRESP_00081091
MOMRESP_00081092-MOMRESP_00081097
MOMRESP_00081098-MOMRESP_00081102
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MOMRESP_00081109-MOMRESP_00081113
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MOMRESP_00081123-MOMRESP_00081124
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MOMRESP_00081130-MOMRESP_00081134
MOMRESP_00081135-MOMRESP_00081139
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MOMRESP_00081145-MOMRESP_00081151
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MOMRESP_00081394-MOMRESP_00081399
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MOMRESP_00081412-MOMRESP_00081416
MOMRESP_00081417-MOMRESP_00081422
MOMRESP_00081423-MOMRESP_00081429
MOMRESP_00081430-MOMRESP_00081434
MOMRESP_00081435-MOMRESP_00081442

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Materials Considered

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MOMRESP_00081450-MOMRESP_00081454
MOMRESP_00081455-MOMRESP_00081464
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MOMRESP_00081494-MOMRESP_00081497
MOMRESP_00081498-MOMRESP_00081504
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MOMRESP_00081524-MOMRESP_00081528
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MOMRESP_00081534-MOMRESP_00081535
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MOMRESP_00081922-MOMRESP_00081934
MOMRESP_00081935-MOMRESP_00081947
MOMRESP_00081948-MOMRESP_00081958

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Materials Considered

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MOMRESP_00081989-MOMRESP_00081997
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MOMRESP_00082153-MOMRESP_00082155
MOMRESP_00082156-MOMRESP_00082157
MOMRESP_00082158-MOMRESP_00082159
MOMRESP_00082160-MOMRESP_00082161
MOMRESP_00082162-MOMRESP_00082164

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Materials Considered

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MOMRESP_00082167-MOMRESP_00082168
MOMRESP_00082169-MOMRESP_00082170
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MOMRESP_00082239-MOMRESP_00082240
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MOMRESP_00082243-MOMRESP_00082245
MOMRESP_00082246-MOMRESP_00082250
MOMRESP_00082251-MOMRESP_00082255
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MOMRESP_00082366-MOMRESP_00082367
MOMRESP_00082368-MOMRESP_00082369
MOMRESP_00082370-MOMRESP_00082371
MOMRESP_00082372-MOMRESP_00082376
MOMRESP_00082377-MOMRESP_00082382

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Materials Considered

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MOMRESP_00082683-MOMRESP_00082694
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MOMRESP_00082715-MOMRESP_00082717
MOMRESP_00082718-MOMRESP_00082720
MOMRESP_00082721-MOMRESP_00082723

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Materials Considered

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Materials Considered

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Materials Considered

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MOMRESP_00083252-MOMRESP_00083253
MOMRESP_00083254-MOMRESP_00083255

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Materials Considered

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Materials Considered

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 MOMRESP_00083409-MOMRESP_00083410
 MOMRESP_00083411-MOMRESP_00083412
 MOMRESP_00083413-MOMRESP_00083414

Mohammad Honarkar v. Mahender Makhijani et al.

Materials Considered

MOMRESP_00083415-MOMRESP_00083416
MOMRESP_00083417-MOMRESP_00083418
MOMRESP_00083419-MOMRESP_00083420
MOMRESP_00083421-MOMRESP_00083422
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MOMRESP_00083460-MOMRESP_00083461
MOMRESP_00083462-MOMRESP_00083463
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MOMRESP_00083487-MOMRESP_00083493
MOMRESP_00083494-MOMRESP_00083499
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MOMRESP_00083534-MOMRESP_00083535
MOMRESP_00083536-MOMRESP_00083537
MOMRESP_00083538-MOMRESP_00083558
MOMRESP_00083559-MOMRESP_00083578
MOMRESP_00083579-MOMRESP_00083583
MOMRESP_00083584-MOMRESP_00083587
MOMRESP_00083588-MOMRESP_00083591
MOMRESP_00083592-MOMRESP_00083595
MOMRESP_00083596-MOMRESP_00083599

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Materials Considered

MOMRESP_00083600-MOMRESP_00083603
MOMRESP_00083604-MOMRESP_00083607
MOMRESP_00083608-MOMRESP_00083611
MOMRESP_00083612-MOMRESP_00083615
MOMRESP_00083616-MOMRESP_00083619
MOMRESP_00083620-MOMRESP_00083623
MOMRESP_00083624-MOMRESP_00083627
MOMRESP_00083628-MOMRESP_00083631
MOMRESP_00083632-MOMRESP_00083635
MOMRESP_00083636-MOMRESP_00083639
MOMRESP_00083640-MOMRESP_00083643
MOMRESP_00083644-MOMRESP_00083647
MOMRESP_00083648-MOMRESP_00083651
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MOMRESP_00083672-MOMRESP_00083675
MOMRESP_00083676-MOMRESP_00083679
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MOMRESP_00083684
MOMRESP_00083685
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MOMRESP_00083734-MOMRESP_00083757
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MOMRESP_00083799-MOMRESP_00083800
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MOMRESP_00083815-MOMRESP_00083816
MOMRESP_00083817-MOMRESP_00083818
MOMRESP_00083819-MOMRESP_00083820

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Materials Considered

MOMRESP_00083821-MOMRESP_00083822
MOMRESP_00083823-MOMRESP_00083824
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MOMRESP_00083831-MOMRESP_00083832
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MOMRESP_00083835-MOMRESP_00083836
MOMRESP_00083837-MOMRESP_00083838
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MOMRESP_00083852-MOMRESP_00083853
MOMRESP_00083854-MOMRESP_00083855
MOMRESP_00083856-MOMRESP_00083857
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MOMRESP_00083927-MOMRESP_00083928
MOMRESP_00083929-MOMRESP_00083930
MOMRESP_00083931-MOMRESP_00083932

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Materials Considered

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MOMRESP_00083935-MOMRESP_00083936
MOMRESP_00083937-MOMRESP_00083938
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MOMRESP_00083941-MOMRESP_00083942
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MOMRESP_00083947-MOMRESP_00083948
MOMRESP_00083949-MOMRESP_00083950
MOMRESP_00083951-MOMRESP_00083952
MOMRESP_00083953-MOMRESP_00083954
MOMRESP_00083955-MOMRESP_00083956
MOMRESP_00083957-MOMRESP_00083958
MOMRESP_00083959-MOMRESP_00083960
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MOMRESP_00083962-MOMRESP_00083963
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MOMRESP_00084012-MOMRESP_00084013
MOMRESP_00084014-MOMRESP_00084015
MOMRESP_00084016-MOMRESP_00084017
MOMRESP_00084018-MOMRESP_00084019
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MOMRESP_00084026-MOMRESP_00084027
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MOMRESP_00084030-MOMRESP_00084031
MOMRESP_00084032-MOMRESP_00084035
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MOMRESP_00084041

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Materials Considered

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MOMRESP_00084044-MOMRESP_00084045
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MOMRESP_00084050-MOMRESP_00084051
MOMRESP_00084052-MOMRESP_00084053
MOMRESP_00084054-MOMRESP_00084055
MOMRESP_00084056-MOMRESP_00084057
MOMRESP_00084058-MOMRESP_00084059
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MOMRESP_00084094
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MOMRESP_00084103-MOMRESP_00084104
MOMRESP_00084105-MOMRESP_00084106
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MOMRESP_00084123-MOMRESP_00084124
MOMRESP_00084125-MOMRESP_00084126
MOMRESP_00084127-MOMRESP_00084128
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MOMRESP_00084133-MOMRESP_00084134
MOMRESP_00084135-MOMRESP_00084136
MOMRESP_00084137-MOMRESP_00084138
MOMRESP_00084139-MOMRESP_00084140
MOMRESP_00084141-MOMRESP_00084142
MOMRESP_00084143-MOMRESP_00084144
MOMRESP_00084145-MOMRESP_00084146
MOMRESP_00084147-MOMRESP_00084148
MOMRESP_00084149
MOMRESP_00084150-MOMRESP_00084151

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Materials Considered

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MOMRESP_00084156-MOMRESP_00084157
MOMRESP_00084158-MOMRESP_00084159
MOMRESP_00084160-MOMRESP_00084161
MOMRESP_00084162-MOMRESP_00084163
MOMRESP_00084164-MOMRESP_00084165
MOMRESP_00084166-MOMRESP_00084167
MOMRESP_00084168-MOMRESP_00084169
MOMRESP_00084170-MOMRESP_00084171
MOMRESP_00084172-MOMRESP_00084173
MOMRESP_00084174-MOMRESP_00084175
MOMRESP_00084176-MOMRESP_00084177
MOMRESP_00084178-MOMRESP_00084179
MOMRESP_00084180-MOMRESP_00084181
MOMRESP_00084182-MOMRESP_00084183
MOMRESP_00084184-MOMRESP_00084185
MOMRESP_00084186-MOMRESP_00084187
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MOMRESP_00084194-MOMRESP_00084195
MOMRESP_00084196-MOMRESP_00084197
MOMRESP_00084198-MOMRESP_00084207
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MOMRESP_00084208-MOMRESP_00084214
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MOMRESP_00084216-MOMRESP_00084222
MOMRESP_00084223-MOMRESP_00084262
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MOMRESP_00084283-MOMRESP_00084288
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MOMRESP_00084290-MOMRESP_00084293
MOMRESP_00084294-MOMRESP_00084320
MOMRESP_00084321-MOMRESP_00084334
MOMRESP_00084335-MOMRESP_00084344
MOMRESP_00084345-MOMRESP_00084350
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MOMRESP_00084353-MOMRESP_00084356
MOMRESP_00084357-MOMRESP_00084360
MOMRESP_00084361-MOMRESP_00084364
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MOMRESP_00084369-MOMRESP_00084372
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MOMRESP_00084388-MOMRESP_00084389
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MOMRESP_00084394-MOMRESP_00084397
MOMRESP_00084398-MOMRESP_00084401
MOMRESP_00084402-MOMRESP_00084404
MOMRESP_00084405-MOMRESP_00084408

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Materials Considered

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MOMRESP_00084414-MOMRESP_00084415
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MOMRESP_00084426-MOMRESP_00084428
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MOMRESP_00084436-MOMRESP_00084439
MOMRESP_00084440-MOMRESP_00084443
MOMRESP_00084444-MOMRESP_00084445
MOMRESP_00084446-MOMRESP_00084447
MOMRESP_00084448-MOMRESP_00084449
MOMRESP_00084450-MOMRESP_00084451
MOMRESP_00084452-MOMRESP_00084453
MOMRESP_00084454-MOMRESP_00084455
MOMRESP_00084456-MOMRESP_00084457
MOMRESP_00084458-MOMRESP_00084459
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MOMRESP_00084462-MOMRESP_00084463
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MOMRESP_00084466-MOMRESP_00084468
MOMRESP_00084469-MOMRESP_00084470
MOMRESP_00084471-MOMRESP_00084472
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MOMRESP_00084491-MOMRESP_00084494
MOMRESP_00084495-MOMRESP_00084498
MOMRESP_00084499-MOMRESP_00084502
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MOMRESP_00084558-MOMRESP_00084561
MOMRESP_00084562-MOMRESP_00084565
MOMRESP_00084566-MOMRESP_00084569

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Materials Considered

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MOMRESP_00084575-MOMRESP_00084578
MOMRESP_00084579-MOMRESP_00084581
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MOMRESP_00084599-MOMRESP_00084600
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MOMRESP_00084643-MOMRESP_00084647
MOMRESP_00084648-MOMRESP_00084650
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Mohammad Honarkar v. Mahender Makhijani et al.

Materials Considered

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Materials Considered

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Mohammad Honarkar v. Mahender Makhijani et al.

Materials Considered

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Materials Considered

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Petition_Supp0000394_CONFIDENTIAL

Mohammad Honarkar v. Mahender Makhijani et al.**Testimony Experience of Michael Spindler during the last 4 years**

Trial Testimony:

Scott Crane v. Rave Restaurant Group, Inc.
 John C. Depp, II v. Amber Laura Heard
 Ryan Kime, M.D. v. Adventist Health Clearlake Hospital, Inc., et al.
 Takeya USA Corporation v. Power Play Marketing Group, LLC
 Kenneth R. Seeley, et al. v. Zenith Homes, LLC, et al.
 Jill M. Hall v. Brad Arthur Manger, as Trustee of the Manger Trust dated December 20, 1990 and as an individual
 Shashikant Jogani v. Haresh Jogani, et al.
 Brett Iannuccillo v. Anesco North Broward, LLC, et al.

Arbitration Testimony:

Marc Haberman and United Partners Limited, LLC v. Michael Call and Jordison LLC
 M. James Schulz, et al. v. Ryan Millsap, et al.
 Blue Ribbon Dispatch Holdings, Inc. v. Rozita Korori and Sina Elyasi
 Robert Ferguson v. ServiceNow, Inc.

Deposition Testimony:

CashCall, Inc., et al. v. Katten Muchin Rosenman, LLP, et al.
 JTS Communities, Inc., et al. v. ZB, N.A. dba California Bank and Trust, et al.
 Five Towns Pediatrics, P.C. d/b/a Pediatric Healthcare of Long Island v. Billet Feit & Preis, P.C., et al.
 M. James Schulz, et al. v. Ryan Millsap, et al.
 Re-Marketing Group, Inc. v. Mark Miller and Wow Bargains & Closeouts, Inc.
 Ryan Kime, M.D. v. Adventist Health Clearlake Hospital, Inc., et al.
 John C. Depp, II v. Amber Laura Heard
 Matthew D. Van Steenwyck, et al. v. Kedrin E. Van Steenwyck, et al.
 Shashikant Jogani v. Harsh Jogani, et al.
 San Juan Products, Inc. et al. v. River Pools & Spas, Inc., et al.
 Kenneth R. Seeley, et al. v. Zenith Homes, LLC, et al.
 Clean Safety, Inc. v. HNC Enterprises, LLC
 Monarch Air Group, LLC d/b/a Mercury Jets, et al. v. JPMorgan Chase Bank, N.A.
 Brendan Thompson v. Enfants Riches Deprimes, et al and related cross-action
 Jill M. Hall v. Brad Arthur Manger, as Trustee of the Manger Trust dated December 20, 1990 and as an individual
 Emi Ito, Olympia West Plaza, LLC & Glendale West Shopping Center, LLC v. Dongsik Benjamin Park, Henry Hough & Chon & Hough, a Professional Corporation
 Purocol, LLC v. Circle K Stores, Inc.
 Christopher Fenton v. DMG Entertainment, LLC, et al.
 Jane Doe v. Robert Lovell and Home Marketing Services, Inc. d/b/a HMS, Inc.
 Robert Ferguson v. ServiceNow, Inc.
 Brett Iannuccillo v. Anesco North Broward, LLC, et al.
 Kevin Neal v. Trinsic Residential Group GP LLC and Brian Tusa
 Sandra K. McBeth, Chapter 7 Trustee of Rajysan, Inc. v. Gurpreet Sahani, et al.

MICHAEL SPINDLER CPA, CFF, CFE, ABV, CAMS

SENIOR MANAGING DIRECTOR

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Prominent Matters

- Expert witness on behalf of Mr. Depp in the Depp v. Heard trial. Testified on the damages incurred by Mr. Depp and in rebuttal to the damages testimony of Ms. Heard's expert.
- Expert Witness on behalf of the SEC in a successful disgorgement proceeding against promoters of oil & gas partnerships
- Witness on behalf of the State of Arizona in a criminal matter alleging an embezzlement at a Fortune 500 company
- Expert witness on damages in a large award related to the mismanagement of a casino
- Expert witness on alter ego on behalf of a writer/director against a film producer, successfully piercing through the corporate veil
- Expert Witness on behalf of successful plaintiff Chevron U.S.A. in litigation alleging violations of the Petroleum Marketing Practices Act

Michael Spindler is a CPA and Certified Fraud Examiner who brings approximately 40 years of experience to complex disputes including matters related to forensic accounting and business fraud investigations across a wide range of industries. He has provided expert testimony on dozens of occasions in bench trials, jury trials and arbitration proceedings. He has provided Foreign Corrupt Practices Act investigations and training services in various countries around the world, including China, Russia, India and Saudi Arabia. Having conducted numerous high-profile investigations of public company financial statement fraud and other matters, Mr. Spindler has presented his findings to special committees and various government agencies on behalf of clients, including the Department of Justice, Federal Bureau of Investigation, Internal Revenue Service and the Office of Thrift Supervision.

Michael's clients include law firms, corporations, individuals, government agencies and non-profit organizations.

Prior to joining B. Riley Advisory Services (formerly GlassRatner), Michael held senior leadership positions with several forensic accounting firms and was a Partner at two national public accounting firms. An experienced public speaker, Michael has authored or co-authored a number of publications on fraud-related topics and developed and presented seminars and courses on forensic accounting and litigation support issues. He is a past President of the Los Angeles Chapter of CALCPA and of the Los Angeles Chapter of the Association of Certified Fraud Examiners. He is also a past member of the Board of Trustees of the CALCPA Education Foundation and of CALCPA Council.

Representative assignments on which Mr. Spindler has worked include:

- Lost Profits/Economic Damage Assessments on behalf of Plaintiffs and Defendants
- Joint venture and shareholder disputes
- Earn-out and compensation disputes

Specialties:

Accounting

Alter Ego

Damages & Lost Profit Analysis

Expert Witness

Forensic Accounting

Fraud Investigation

Internal Investigations

Litigation Support

Ponzi Schemes

White Collar Crime

Industries:

Financial Institution

Manufacturing

Media & Entertainment

Real Estate

Retail

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- Fraud Investigations
- Royalty Inspections
- Film and participation audits
- Business manager reviews
- Internal Corporate Investigations in connection with allegations of management fraud, financial statement fraud and internal embezzlements
- Alter ego assessments
- Ponzi scheme investigations
- FCPA investigations and consulting

Michael is a Certified Public Accountant (licensed in California, New York, Nevada, Arizona, Utah and Hawaii), is Certified in Financial Forensics, is Accredited in Business Valuation (both issued by the AICPA) is a Certified Fraud Examiner (issued by the Association of Certified Fraud Examiners) and is a Certified Anti-Money Laundering Specialist ("CAMS"). Mr. Spindler graduated from the State University of New York at Albany with a bachelor of science degree in accounting in 1981.

EXHIBIT 5

**JAMS ARBITRATION
No. 5220003126**

MOHAMMAD HONARKAR AND 4G WIRELESS, INC.,

Claimants,

MAHENDER MAKHIJANI; CONTINUUM ANALYTICS, INC.; et al.,

Respondents,

and

MOM AS INVESTCO, LLC; MOM BS INVESTCO, LLC; et al.,

Nominal Respondents.

CONSOLIDATED WITH JAMS ARBITRATION NO. 5200001122

**RULING ON REQUEST FOR CLARIFICATION AND
CONSOLIDATED SCHEDULING ORDER NO. 106**

A virtual interim arbitration management conference was conducted on May 12, 2025. Joseph Ybarra, Esq., and Sam Maralan, Esq., appeared on behalf of the Claimants.¹ Michael Farrell, Esq., and Scott Leipzig, appeared on behalf of the MOM Members and the MOM Managers. Anthony, Bisconti, Esq. appeared on behalf of the MOM JV Entities. There was no appearance on behalf of Makhijani and Continuum. Lawrence DeMeo, Esq., and Hakop Stepanyan, Esq. appeared on behalf of respondent Nano Banc. This Consolidated Scheduling Order No. 106 supplements Consolidated Scheduling Order No. 100 (“SO 100”) dated March 22, 2024, as previously amended.

A. Primary Focus. The primary focus of the conference was to discuss the request for clarification addressed in Scheduling Order No. 105 and in Paragraph B below.

¹ All capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Partial Interim Award dated February 21, 2025 (the “Interim Award”).

B. Ruling on Request for Clarification. In their May 1, 2025, status report Claimants requested Arbitrator to clarify one aspect of the Partial Interim Award (the “Request”). The MOM JV Entities opposed the Request in their supplemental status report dated May 1, 2025. On May 8, 2025, the MOM JV Entities filed a supplemental brief regarding the Request, and the MOM Managers filed an opposition to the Request. (The May 1 and May 8 oppositions will be referred to collectively as the “Oppositions.”) On May 9, 2025, Claimants filed a reply (the “Reply”) to the Oppositions. On May 12, 2025, Arbitrator entertained argument on the Request.

The Request pertains to the sections of the Interim Award that state:

- (i) “the joint venture (“JV”) comprises a portfolio of commercial properties that **were previously owned by [the Honarkar Parties] and are now owned by the MOM JV Entities.**” (Interim Award, p. 3, § 1 (emphasis added));
- (ii) “Palm Desert Collective Resorts LLC, 424 Marguerite Ave. LLC, and 8871 Research Dr. LLC are “Held-Back LLCs” under the ACA and the Operating Agreements and thus, **were never contributed to the MOM JV Entities.**” (Interim Award, p. 43, § L (3) (emphasis added)); and
- (iii) “The following entities appear on Exhibit C of the Operating Agreements and ACA **but were never intended by the parties to be Contributed Entities to the JV:** 4G (Ex. 583 [Letter Agreement – 4G is the MO Member]), Modan LLC (majority owned by Niazi), BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, **Terra Laguna Beach Inc.**, Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing 82 LLC, and Brookline Aliso Viejo LLC.” (Interim Award, p. 43, § L (4) (emphasis added).)

The Request seeks clarification as to whether the Interim Award determined the entities listed in (iii) above (the “Declaratory Relief Entities”) are owned by the MOM JV Entities. Claimants contend the Interim Award determined the Declaratory Relief Entities are not owned by the MOM JV Entities. The MOM Managers, the MOM Members, Makhijani, and Continuum dispute this contention.

Arbitrator, having fully considered the Request, the Oppositions, and the Reply, together with the oral arguments of counsel on May 12, 2025, and all of the other pleadings and papers on file herein, hereby FINDS, RULES, and ORDERS as follows:

The Request is GRANTED, and Arbitrator therefore CLARIFIES the Interim Award was intended to and did in fact determine the Declaratory Relief Entities (including Terra Laguna Beach, Inc.) are not now and never have been owned by the MOM JV Entities. Any ambiguity in the Interim Award on this point is a result of my imprecise writing not my thinking. The Partial Final Award will reflect this clarification.

C. Further Interim Conference. An interim status conference shall take place at 8:30 a.m. on June 12, 2025.

D. Effect. SO 100 remains in full force and effect, as supplemented herein.

Dated: May 12, 2025



Hon. David A Thompson (Ret.)
Arbitrator